

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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

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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 January 16, 2004, 12:00 a.m., and February 2, 2004, 11:59 p.m. are included in this, the February 15, 2004, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least March 16, 2004. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through June 14, 2004, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

**Commerce, Consumer Protection
R152-34
Postsecondary Proprietary School Act
Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26905

FILED: 01/16/2004, 12:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to correct omissions and mistakes made when the rule was drafted to replace Rule R765-171 when the legislature moved enforcement of the Postsecondary Proprietary School act from the State Board of Regents to Utah State Division of Consumer Protection. The amendment also makes changes which will assist the Division in its enforcement duties of the Act. (DAR NOTE: The original proposed new rule of R152-34 was published in the July 1, 2002, issue of the Utah State Bulletin, and was effective August 26, 2002.)

SUMMARY OF THE RULE OR CHANGE: The change: amends Section R152-34-4 by adding language which will insure that if an offered program is to prepare students for entry into fields of employment which require licensure by any licensing agency, the requirements of said agency will be met by the program; amends Subsection R152-34-6(1)(k) to delete unnecessary language to make subsection consistent with the rest of the amended rule; amends Subsection R152-34-7(1)(3) by adding language which was accidentally omitted when the rule was proposed which clarified issues regarding the operation and transfer of ownership of Proprietary Schools and renumbers subsections to make numbering consistent with amendments; amends Subsections R152-34-7(9) and (10), renumbered as (11) and (12), to increase the surety that the operator of a Postsecondary Proprietary School is required to file with the Division; amends Subsections R152-34-8(3)(b),(c), and (f) to change and clarify allowed tuition payment plans; amends Subsection R152-34-8(7)(g) to clarify disclaimer statements required in a school's catalog, student information bulletin and enrollment agreements; and amends Subsection R152-34-9(3) by changing the time, and under what circumstances, the Division shall hold a surety after the date that the institution has terminated operations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 13, Chapter 34

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This change will have no anticipated impact on the State budget because it will not alter the Division's enforcement activities.
- ❖ LOCAL GOVERNMENTS: This change will cause no anticipated cost or savings to local governments because the activities regulated by the Statute have no impact on local governments.

❖ OTHER PERSONS: These amendments will increase the surety required under the Act, however there is no reliable way of determining how much more Proprietary School operators as a whole will be required to pay for the additional surety because the cost of a surety is figured based on each individual operator's financial strength and ability to secure an irrevocable line of credit. For some operators, there will be no additional cost involved. For others, the additional cost could be substantial.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments will increase the surety required under the Act, however there is no reliable way of determining how much more Proprietary School operators will be required to pay for the additional surety because the cost of a surety is figured based on each individual operator's financial strength and ability to secure an irrevocable line of credit. For some operators, there will be no additional cost involved. For others, the additional cost could be substantial.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments will increase the surety required under the Act, however there is no reliable way of determining how much more Proprietary School operators as a whole will be required to pay for the additional surety because the cost of a surety is figured based on each individual operator's financial strength and ability to secure an irrevocable line of credit. For some operators, there will be no additional cost involved. For others, the additional cost could be substantial.

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

COMMERCER
CONSUMER PROTECTION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Douglas Haymore at the above address, by phone at 801-530-6929, by FAX at 801-530-6001, or by Internet E-mail at dhaymore@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 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Francine Giani, Director

R152. Commerce, Consumer Protection.**R152-34. Postsecondary Proprietary School Act Rules.****R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.**

- (1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) 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 entity offering, or desiring to offer, the program of study must provide the Division:

(A) 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;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection(B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective

student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may reasonably require from time to time.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.

(1) The registration statement application shall provide the following information and statements made under oath:

- (a) The institution's name, address, and telephone number;
- (b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) ~~A [D]disclosure as required by R152-34-7(1),[of whether the institution, or any owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.]~~

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in R152-34-7(5) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

~~(1) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.~~

~~(2) The division shall refuse to register an institution when it determines that the institution or an owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding, and the division determines the violation(s) to be relevant to the appropriate operation of the school and has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.~~

~~[(+)](3) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period. When this occurs the following information is submitted to the division for its review:~~

~~(a) a copy of any new articles of incorporation;~~

~~(b) a current financial statement, as outlined in section (8) below;~~

~~(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;~~

~~(d) a detailed description of any material modifications to be made in the operation of the institution; and~~

~~(e) payment of the appropriate fee.~~

~~(i) The division collects the following fees in accordance with U.C.A. Subsection 13-34-107(5):~~

~~(A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division.~~

~~(B) The division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.~~

~~(C) All registration fees collected by the division will be used to enhance the administration of the Act and Rules.~~

[~~(2)~~](4) The institution shall submit to the division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

[~~(3)~~](5) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

[~~(4)~~](6) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the division shall do one of the following: (1) issue a certificate of registration; (2) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-11(1); or (3) refuse to accept the registration statement based on Sections 13-34-107 and 113.

[~~(5)~~](7) Although a certificate of registration is valid for two (2) years, the division may periodically request updates of financial statements, surety requirements and the following statistical information:

- (a) The number of students enrolled from September 1 through August 31;
- (b) The number of students who completed and received a credential;
- (c) The number of students who terminated or withdrew;
- (d) The number of administrators, faculty, supporting staff, and agents; and
- (e) The new catalog, information bulletin, or supplements.

[~~(6)~~](8) The institution must have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet and an income statement for the most recent fiscal year with all applicable footnotes;

(b) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and/or

(c) A certified fiscal audit of its operations or such other documentation of financial status as may be required by the [board]division.

[~~(7)~~](9) A satisfactory bond, certificate of deposit, or irrevocable letter of credit must be provided by the institution before a certificate of registration will be issued by the division. The obligation of the surety will be that the institution, its officers, agents, and employees will (1) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students, and (2) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules. The bond, certificate of deposit, or letter of credit must be in a form approved by the division and issued by a company authorized to do such business in Utah. The bond must be payable to the division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

[~~(8)~~](10) The bond company may not be relieved of liability on the bond unless it gives the institution and the division ninety

calendar days notice by certified mail of the company's intent to cancel the bond. The cancellation or discontinuance of bond coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the bond was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the bond was in force. If at any time the company that issued the bond cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage unless a replacement bond is obtained and provided to the division.

[~~(9)~~](11) Before an original registration is issued, the institution shall secure and submit to the division a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five-hundred[seventy five thousand] dollars (\$187,500)[(\$75,000)] for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five[fifty] thousand dollars (\$125,000)[(\$50,000)] for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five-hundred[twenty five thousand] dollars (\$62,500)[(\$25,000)] for institutions expecting to enroll less than 50 separate individual students during the first year. Institutions that submit evidence acceptable to the division that the school's gross tuition income from any source during the first year will be less than twenty-five[ten] thousand dollars (\$25,000)[(\$10,000)] may provide a bond of twelve thousand, five hundred dollars (\$12,500)[(\$5,000)] for the first year of operation.

[~~(10)~~](12) The minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five[ten] percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000[.00]), with a minimum bond amount of twelve thousand, five hundred dollars (\$12,500)[(\$5,000)] and a maximum bond amount of one hundred and eighty-seven thousand, five-hundred[seventy five thousand] dollars (\$187,500)[(\$75,000)]. The surety must be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal. No additional programs may be offered without appropriate adjustment to the bond amount.

[~~(11)~~](13) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the bond meets the requirements of this rule. The division may require that such statement be verified by an independent certified public accountant if the division determines that the written evidence confirming the amount of the bond is questionable.

[~~(12)~~](14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a bond.

[~~(13)~~](15) The division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

[~~(14)~~](16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the division supervises,

recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution[for non-traditional instruction] may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or [within a ten day review period after]prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for student's who desire a refund [A]after the three-business-day cooling-off period or after a student enrolled in a correspondence institution[for non traditional instruction] has submitted lesson materials or been in receipt of course materials_[for a period of ten days, the withdrawn or dismissed student shall be refunded, within thirty days of his/her discontinuing, a percentage of all tuition paid over and above a nonrefundable registration fee not to exceed \$200 or an alternative amount that the institution can demonstrate to have been expended in undertaking that particular student's instruction. The balance due the student, over and above the nonrefundable registration fee will be calculated using the following schedule:

TABLE

Date of Withdrawal as a Percent of the Enrollment Period for Which the Student was Obligated	Portion of Tuition and Fees Obligated and Paid that are Eligible to be Retained by the Institution
Within 1st 10%	10%
Within 2nd 10%	25%
Within 3rd 10%	40%
Within 4th 10%	55%
Within 5th 10%	70%
Within 6th 10%	100%

] (d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each, and

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s) at any one time to the institution for[the collection of prepaid or unearned] tuition and fees to three[six] months of training, plus registration or start-up costs not to exceed \$200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) The institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that it's organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(i) An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

(A) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(B) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(C) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

- (a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and
- (b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof;

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.

(1) Institutional closure procedures consist of the following:

(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.

(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

(a) appropriate entrance and admission acceptance information;

(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates of students;

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.^[1]

(3) The division shall not release a surety required under R152-34-7(11) and/or R152-34-7(12) until one year after the date that the institution has complied with the requirements of (1) and (2) above, or until such time as the institution provides documentation acceptable to the division to show that the institution has complied with (1) and (2) above and has satisfied all possible claims for

refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

**KEY: education, postsecondary proprietary school, registration [August 26, 2002]2004
13-2-5(1)**



Commerce, Real Estate **R162-203**

Changes to Residential Mortgage Registration Statement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26909

FILED: 01/23/2004, 09:59

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A statutory amendment that became effective on January 1, 2004, changed "registrations" to "licenses." (H.B. 277, 2003 General Session.) This amendment makes the rule consistent with the statute. (DAR Note: H.B. 277 is found at UTL 2003 Ch 243, and was effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The words "licensure" and "licensed" are substituted for "registration" and "registered" throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any cost to the State budget that is incurred by changing residential mortgage "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

❖ LOCAL GOVERNMENTS: None--Local governments are not affected by whether residential mortgage brokers are "registrants" or "licensees."

❖ OTHER PERSONS: None--Any cost that other persons might incur as a result of the name change from mortgage "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any costs that might be incurred by residential mortgage brokers as a result of the change from a "registration" to a "license" was caused by the statutory change itself (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this rule filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act.

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 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Klare Bachman, Executive Director

R162. Commerce, Real Estate.

R162-203. Changes to Residential Mortgage [Registration] Licensure Statement.

R162-203-1. Changes to Residential Mortgage [Registration] Licensure Statement.

An individual ~~registered~~licensed under the Utah Residential Mortgage Practices Act must notify the Division on the form required by the Division of any entity for which that individual shall conduct residential mortgage lending before acting on behalf of that entity.

KEY: residential mortgage loan origination

[December 24, 2004] 2004

61-2c-205(3)

Commerce, Real Estate

R162-204

Residential Mortgage Record Keeping Requirements

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE No.: 26908

FILED: 01/23/2004, 09:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A statutory amendment that became effective on January 1, 2004, changed "registrations" to "licenses". This amendment makes the rule consistent with the statute. (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and was effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The word "registered" is changed to "licensed" throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any impact on the State budget that is caused by changing residential mortgage "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

❖ LOCAL GOVERNMENTS: None--Local governments are not affected by whether residential mortgage brokers are called "registrants" or "licensees."

❖ OTHER PERSONS: None--Any impact on other persons that is caused by changing residential mortgage "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any costs that might be incurred by residential mortgage brokers as a result of the change from "registrations" to "licenses" was caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this rule filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act.

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 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Klare Bachman, Executive Director

R162. Commerce, Real Estate.

R162-204. Residential Mortgage Record Keeping Requirements.

R162-204-1. Residential Mortgage Record Keeping Requirements.

A person [registered]licensed under the Utah Residential Mortgage Practices Act must maintain for the period set forth in Utah Code Section 61-2c-302 the following records:

- (a) Application forms;
- (b) Disclosure forms;
- (c) Truth-in-Lending forms;
- (d) Credit reports and the explanations therefor;
- (e) Conversation logs;
- (f) Verifications of employment, paycheck stubs, and tax returns;
- (g) Proof of legal residency, if applicable;
- (h) Appraisals, appraisal addenda, and records of communications between the appraiser and the registrant or lender;
- (i) Underwriter denials;
- (j) Loan approval; and
- (k) All other records required by underwriters involved with the transaction.

KEY: residential mortgage loan origination

[December 24, 2004]2004

61-2c-302

Commerce, Real Estate

R162-205

Residential Mortgage Unprofessional Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26907

FILED: 01/23/2004, 09:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A statutory amendment that became effective on January 1, 2004, changed "registrations" to "licenses." (H.B. 277, 2003 General Session.) This amendment makes the rule consistent with the statute. (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and was effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The word "registered" is changed to "licensed" throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any impact on the State budget that is caused by changing residential mortgage "registrations"

to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

❖ LOCAL GOVERNMENTS: None--Local governments are not affected by whether residential mortgage brokers are called "registrants" or "licensees."

❖ OTHER PERSONS: None--Any impact on other persons that is caused by changing residential mortgage "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any costs that might be incurred by residential mortgage brokers as a result of the change from "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this rule filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act.

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 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Klare Bachman, Executive Director

R162. Commerce, Real Estate.

R162-205. Residential Mortgage Unprofessional Conduct.

R162-205-1. Residential Mortgage Unprofessional Conduct.

Unprofessional conduct includes the following acts:

(a) conducting the business of residential mortgage lending under any name other than a name under which the entity or individual conducting such business is [registered]licensed with the Division;

(b) Failing to remit to the appropriate third parties appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower;

(c) Charging for services not actually performed; and

(d) Charging a borrower more for third party services than the actual cost of those services.

KEY: residential mortgage loan origination

[December 24, 2004] 2004

61-2c-301(1)(i)

Commerce, Real Estate
R162-209
Administrative Proceedings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26906

FILED: 01/23/2004, 09:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A statutory amendment that became effective on January 1, 2004, changed "registrations" to "licenses." (H.B. 277, 2003 General Session.) This amendment makes the rule consistent with the statute. (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and was effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: References to the word "registration" are changed to "license" throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any impact on the State budget that is caused by changing residential mortgage "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.
- ❖ LOCAL GOVERNMENTS: None--Local governments are not affected by whether residential mortgage brokers are "registrants" or "licensees."
- ❖ OTHER PERSONS: None--Any impact on other persons that is caused by changing residential mortgage "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any costs that might be incurred by residential mortgage brokers as a result of the change from "registrations" to "licenses" would be caused by the statutory change (H.B. 277, 2003 General Session) and not by this rule change conforming the administrative rule to that statutory change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this rule filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act.

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 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Klare Bachman, Executive Director

R162. Commerce, Real Estate.

R162-209. Administrative Proceedings.

R162-209-1. Formal Adjudicative Proceedings.

Any adjudicative proceeding as to the following matters shall be conducted on a formal basis:

209.1.1. A disciplinary action commenced by the Division following investigation of a complaint; and

209.1.2. Any proceedings conducted subsequent to the issuance of a cease and desist order.

R162-209-2. Informal Adjudicative Proceedings.

209.2.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

209.2.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules.

209.2.3. A party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

209.2.4. All proceedings on original or renewal applications for [registration]a license will be conducted as informal adjudicative proceedings.

209.2.5. Any application form which is filled out and submitted to the Division for [registration]a license or renewal of [registration]a license shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46b-1, et seq.

209.2.6. Within a reasonable time after receipt of an application, the Division shall:

(a) issue and mail a [registration]license to the applicant, which shall be deemed notification that the application is granted conditionally subject to the outcome of the criminal background check;

(b) notify the applicant that the application is incomplete or that further information is needed;

(c) notify the applicant that a hearing shall be scheduled before the Utah Residential Mortgage Regulatory Commission; or

(d) notify the applicant that the application is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

209.2.7. Other Requests for Agency Action. All other requests for agency action shall be in writing and signed by the requestor, and shall contain the following:

- (a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;
- (b) the agency's file number or other reference number, if known;
- (c) the date of mailing of the request for agency action;
- (d) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;
- (e) a statement of the relief or action sought from the Division; and
- (f) a statement of the facts and reasons forming the basis for relief or agency action.

209.2.8. Within a reasonable time after receipt of a request for agency action other than an application for an original or [renewal registration]renewed license, the Division shall:

- (a) notify the requestor in writing that the request is granted;
- (b) notify the requestor that the request is incomplete or that further information is needed before the Division is able to make a determination on the request;
- (c) notify the requestor that the Division does not have the legal authority or jurisdiction to grant the relief requested or the action sought; or
- (d) notify the requestor that the request is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

209.2.9. A complaint against a [registrant]licensee requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46-1, et seq.

R162-209-3. Hearings Not Required.

A hearing is not required and will not be held in the following informal adjudicative proceedings:

- (a) The issuance of an original or [renewal registration]renewed license when the application has been approved by the Division;
- (b) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division; or
- (c) The denial of an application for original or [renewal registration]renewed license on the ground that it is incomplete.

R162-209-4. Hearings Permitted.

209.4.1. An informal post-revocation hearing following the revocation of a [registration]license pursuant to Utah Code Section 61-2c-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held only if requested in writing by the person within 30 days from the date the Division's order revoking the [registration]license was mailed.

R162-209-5. Procedures for Hearing in Informal Adjudicative Proceedings.

209.5.1. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for [registration]a license or upon receipt of a timely request for a hearing where other hearings are permitted, the

Division shall mail written notice of the date, time, and place scheduled for the hearing at least ten days prior to the hearing.

209.5.2. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence. All parties shall have access to the Division's files and all materials and information gathered in any investigation to the extent permitted by law.

209.5.3. Intervention is prohibited.

209.5.4. Hearings shall be open to all parties, except that a hearing on an applicant's fitness for [registration]a license shall be conducted in a closed session which is not open to the public. The parties named in the notice of agency action or the request for agency action may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

209.5.5. Within a reasonable time after the hearing, the presiding officer shall cause to be issued and sent to the parties a signed order based on the facts appearing in the agency's files and on the facts presented in evidence at the hearing. The order shall state the decision and the reasons therefor and a notice of the right of administrative review and judicial review available to the parties including applicable time limits.

KEY: residential mortgage loan origination

[July 19, 2002]2004

63-46b-4

Environmental Quality, Drinking Water

R309-302

Required Certification Rules for Backflow Technicians in the State of Utah

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26931

FILED: 02/02/2004, 14:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to update terminology, formatting and clarification of Class titles, technician responsibilities, and renewal criteria for a Class 3 technician.

SUMMARY OF THE RULE OR CHANGE: The rule is being renumbered from Rule R309-302 to Rule R309-305. In addition, the rule change clarifies the Class titles, the renewal criteria for a Class 3 backflow certification and updates the format to coincide with other Division of Drinking Water rules. The rule also lists the responsibilities of a backflow technician for which they will be held accountable and clarifies the required length for certification and recertification classes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(4)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No impact--The rule change clarifies and updates portions of the rule and does not add any additional requirements.
- ❖ LOCAL GOVERNMENTS: No impact--The rule change clarifies and updates portions of the rule and does not add any additional requirements.
- ❖ OTHER PERSONS: No impact--The rule change clarifies and updates portions of the rule and does not add any additional requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change as a result of this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments listed under the Cost or Savings statements and the Compliance costs for affected persons above. Dianne R. Nielson, Ph.D., Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ken Bousfield or Patti Fauver at the above address, by phone at 801-536-4207 or 801-536-4196, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at kbousfield@utah.gov or pfauber@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 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.

[R309-302. Required |R309-305. Certification Rules for Backflow Technicians| in the State of Utah].

[R309-302-1. Objectives;|R309-305-1. Purpose.

(1) These certification rules are established in order to promote the use of trained, experienced professional personnel in protecting the public's health.

(2) To establish standards for training, examination[examining] and certification of those personnel involved with cross connection control program administration, testing, maintenance, and repair of backflow prevention assemblies. In addition to establishing standards for [and] the instruction of Backflow Technicians.

[R309-302-2.]|R309-305-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(4)(a) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act[The Backflow Technician certification program is authorized by Utah Code Annotated, Section 19-4-104(4)(a)].

[R309-302-3.]|R309-305-3. Extent of Coverage.

These rules shall apply to all personnel who will be:

(1)[a-] directly involved with the administration or enforcement of any cross connection control program being administered by a drinking water system;

(2)[b-] testing, maintaining and/or repairing any backflow prevention assembly;

(3)[e-] instructors within the certification program, regardless of institution or program.

[R309-302-4.]|R309-305-4. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.[Cross Connection Control Subcommittee means the duly constituted advisory subcommittee appointed by the Safe Drinking Water Committee to advise the Safe Drinking Water Committee on Backflow Technician Certification and the Cross Connection Control Program of Utah. The Subcommittee will review the qualifications of applicants and make recommendations to the Safe Drinking Water Committee for certification of those individuals.

Bureau of Drinking Water/Sanitation means that Bureau within the Department of Health which regulates public drinking water systems.

Cross Connection Control Program means the program administered by the public water system in which cross connections are either eliminated or controlled.

Executive Secretary means the Executive Secretary to the Utah Safe Drinking Water Committee.

Class means the level of certification of Backflow Prevention Technician (Class I, II and III).]

(1) Backflow Technician - An individual who has met the requirements and successfully completed the course of instruction and certification requirements for Class I, II or III backflow technician certification as outlined herein.

(2) Class - means the level of certification of a Backflow Technician (Class I, II or III).

(3) Performance Examination - means a closed book hands on demonstration of an individual's ability to conduct a field test on backflow prevention assemblies.

(4) Proctor - means a Class III Technician authorized to administer the written or the performance examination.[

Public Drinking Water Supply means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections, or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.]

(5) Renewal Course - means a course of instruction, approved by the Commission[Subcommittee], which is a prerequisite to the renewal of a Backflow Technician's Certificate.

(6) Secretary to the Commission[Subcommittee] - means that individual appointed by the Executive Secretary to conduct the business of the Commission and to make recommendations to the

Executive Secretary regarding backflow technician certification [Subcommittee].

[Utah Safe Drinking Water Committee — means the duly constituted Committee appointed by the Governor, and responsible for the promulgation, interpretation and enforcement of public drinking water regulations within Utah.](7) Written Examination — means the examination for record used to determine the competency and ability of applicants in understanding of the required course of instruction.

[R309-302-5.]R309-305-5. General Policies.

(1)[5.1] Certification Application: Any individual may apply for certification.

(2)[5.2] Certification Classes: The classes of certificates shall[will] be: Class I, Class II, and Class III.

(a) [5.2.1] Class I - [Backflow Technician]Cross Connection Control Program Administrator: This certificate shall[will] be issued to those individuals who are directly involved in administering a cross connection control program, who have demonstrated their knowledge and ability by passing the certification examination.

(i) These individuals may NOT test, maintain or repair any backflow prevention assembly for record (except to insure proper testing techniques are being utilized within their jurisdiction).

(ii) These individuals may conduct plan/design reviews, hazard assessment investigations, compliance inspections, and enforce local laws, codes, [(including the Utah Plumbing Code as it applies to cross connection control and backflow prevention),] rules and regulations and policies within their jurisdictions, and offer technical assistance as needed.

(b) [5.2.2] Class II - Backflow Assembly Tester[Technician]: This certificate shall[will] be issued to those individuals who [meet the criteria for Class I]have demonstrated their knowledge and ability by passing the certification examination and in addition having proven qualified and competent to test, maintain, and/or repair (see R309-305-5(3)(b)[Section 5.3.3]) backflow prevention assemblies (commercially as well as within their jurisdiction) by passing the practical examination.

(c) [5.2.3] Class III - [Backflow Technician]Backflow Instructor Trainer: This certificate shall[will] be issued to those individuals who have successfully completed a 3 year renewal cycle as [meet the criteria for] Class II Technician and in addition have proven qualified and competent to instruct approved Backflow Technician Certification classes by participating in and passing an approved Class III certification["Train The Trainers"] course.

(3)[5.3] Certification Requirements: Those individuals seeking certification as a Backflow Technician must participate in an approved Technician's course of instruction and pass the examination required per class of certification.[

5.3.1 All individuals who hold a valid Backflow Technician's license issued prior to the initiation of these rules will be issued a Class II Backflow Technician certificate.]

(a)[5.3.2] All individuals who instruct Backflow Technician training courses must hold a current Class III - Backflow Technician certificate.

(b)[5.3.3] The issuance of a Backflow Technician certificate (Class I, II or III) does NOT authorize that individual to install or replace any backflow prevention assembly. The installation replacement or repair of assemblies must be made by a [licensed Journeyman Plumber (Title 58, Chapter 54, Utah Code Annotated)]tester having appropriate licensure from the Department

of Commerce, Division of Professional Licensing, except when the Backflow Technician is an agent of the assembly owner.

R309-305-6. Technician Responsibilities.

(1) All technicians shall notify the Division of Drinking Water, local health department and the appropriate public water system of any backflow incident as soon as possible, but within eight hours. The Division can be reached during business hours at 801-536-4200 or after hours at 801-536-4123;

(2) All technicians shall notify the appropriate public water system of a failing backflow prevention assembly within five days;

(3) All technicians shall ensure that acceptable procedures are used for testing, repairing and maintaining any backflow prevention assembly;

(4) All technicians shall report the backflow prevention assembly test results to the appropriate public water system;

(5) All technicians shall include, on the test report form, any materials or replacement parts used to effect a repair or to perform maintenance on a backflow prevention assembly;

(6) All technicians shall ensure that any replacement part is equal in quality to parts originally supplied within the backflow prevention assembly and are supplied only by the manufacturer or their agent;

(7) All technicians shall not change the design, material, or operational characteristics of the assembly during any repair or maintenance;

(8) All technicians shall perform each test and shall be responsible for the competency and accuracy of all testing and reports thereof;

(9) All technicians shall ensure the status of their technician certification is current; and

(10) All technicians shall be equipped with and competent in the use of all tools, gauges, and equipment necessary to properly test, repair and maintain a backflow prevention assembly.

[R309-302-6.]R309-305-7. Examinations.

(1)[6.1] Exam Issuance: The examination recognized by the Commission[Subcommittee] for certification shall[will] be issued through the Division of Drinking Water[Bureau of Drinking Water/Sanitation] for both initial certification and renewal of certification[renewals to those certified instructors teaching a course approved by the Cross Connection Control Subcommittee].

If an individual fails an examination, he may file another application for reexamination on the next available test date.

(a)[6.1.1] Examinations (both written and performance[practical]) that are used to determine competency and ability shall[will] be approved by the Cross Connection Control Commission[Subcommittee] prior to being issued.

(b)[6.1.2] Oral examinations may be administered[, with approval from the Cross Connection Control Subcommittee, on a case by case basis.] to an individual who has failed to pass at least two consecutive written examinations. The oral examination shall be administered by at least one Commission member and two Class III Backflow Technicians. If the individual fails the examination, he shall be given written notification of those areas deficient.

(2)[6.2] Exam Scoring: Class I, Class II and Class III Technician's must successfully complete a written exam with a score of 70% or higher. Class II Technician's must also successfully demonstrate competence and ability in the performance[practical] examination, for the testing of the a Pressure [Atmospheric] Vacuum Breaker Assembly, a Spill-Resistant Pressure Vacuum Breaker

Assembly, a Double Check Valve Assembly, and a Reduced Pressure [Zone] Principal Backflow Prevention Assembly[Assemblies].

(a)[6.2.1] The performance[practical] examination shall[will] be conducted by a minimum of two Class III Technicians.

(b)[6.2.2] Each candidate must demonstrate competence and shall[will] be evaluated by a proctor[all proctors] and assessed a pass or fail grade in each of the following areas.

- (i)[+] Properly identify backflow assembly
- (ii)[2] Properly identify test equipment needed
- (iii)[3] Properly connect test equipment
- (iv)[4] Test assembly
- (v)[5] Identify inaccuracies
- (vi)[6] Properly diagnose assembly problems
- (vii)[7] Properly record test results

The candidate must receive a pass grade from the[each] proctor in all areas listed above for each assembly tested in order to pass the performance[practical] examination.

(c)[6.2.3] An individual may apply for reexamination of either portion of the examination a maximum of two times. After a third failing grade, the individual must register for and complete another technician's course prior to any further[the] reexamination.

(3)[6.3] Class III Exam: Class III Technicians must participate in, and pass, a Class 3 Certification["train the trainers"] course, approved by the Cross Connection Control [Subcommittee]Commission, in addition to the successful completion of the Class II Technician's certification course.

[R309-302-7.]R309-305-8. Certificates.

(1)[7.1] Certificate Issuance: For a certificate to be issued, the individual must complete a Technician's training course and pass with a minimum score of 70% the written examination. For Class II and III certificates, passing marks on the performance[practical portion of the] examination shall[will] also be required.

(2)[7.2] Certificate Renewal: The Backflow Technician's certificate is issued by the Executive Secretary and shall[will] expire December 31, three years from the year of issuance.

(a) Backflow Technician certificates shall[will] be issued by the Commission[Subcommittee]'s Secretary, by delegated authority from the [Safe] Drinking Water Board[Committee].

(b)[7.2.1] The Backflow Technician's certificate may be renewed up to six months in advance of the expiration date.

(c)[7.2.2] To renew a Class I or II Technician[Technician's] certificate, the Technician must register and participate in an approved[a] backflow prevention renewal course, and pass the renewal examination (minimum score of 70%) which shall[will] include a performance[practical] portion for Class II[-and III] Certification.

(d)[7.2.3] To renew a Class III Technician certificate, the following criteria shall be met:

(i) In the 3 year certification period a total of three events from the following list shall be obtained in any combination:

(A) Instruction at an Commission approved backflow technician certification or renewal course.

(B) Serve as a proctor for the performance examination at a Commission approved backflow technician certification or renewal course.

(ii) Attendance at a minimum of two of the annual Class III coordination meetings or receive a meeting update from Commission Secretary.

(iii) Attendance and successful review at a Class III renewal course, as approved by the Cross Connection Control Commission. The course would consist of presentation of a randomly picked topic in backflow prevention before a peer group of other Class III technicians, and a demonstration of knowledge of all the testing equipment available by a random selection of test equipment for the technician to perform the performance exam. [that was issued prior to December 31, 1989, the Technician must register and attend a one day renewal course and pass a renewal written exam (minimum 70%) only. (There will not be a practical portion included in the renewal courses until 1992.)]

(e)[7.2.4] Should the applicant fail the renewal written examination (minimum score of 70%), renewal of that existing license shall[will] not be allowed until a passing score is obtained. If the applicant fails to pass the test after three attempts, the applicant shall[will] be required to participate in an approved Backflow Technician's course before retaking the written and [practical]performance examinations. (Class I Technicians would only need to pass the written examination.)

(3)[7.3] Certification Revocation: The Executive[Subcommittee's Secretary is authorized to] may suspend or revoke a Backflow Technician's certification, for good cause, including any of the following:[upon recommendation of the Subcommittee if, following a hearing of the Subcommittee, it is found that:]

(a)[a.] The certified person has acted in disregard for[There is evidence that a disregard of] public health or safety:[and safety has occurred:]

(b)[b.] [There is evidence that a violation of]The certified person has engaged in activities beyond the scope of their licensure through the Department of Commerce, Division of Professional Licensing (i.e. installation, or replacement of assemblies);[- the Plumber's Law (Title 58 Chapter 54), that prohibits installation or replacement of assemblies, has occurred.]

(c)[c.] [There is evidence that a misrepresentation or falsification of]The certified person has misrepresented or falsified figures or reports concerning backflow prevention assembly or test results;[has occurred.]

(d)[d.] [There is evidence that a failure to notify the proper authorities of a failing backflow prevention assembly within five days has occurred.]The certified person has failed to notify proper authorities of a failing backflow prevention assembly within five days, as required by R309-305-6(2);

(e)[e.] [There is evidence that a failure to notify the proper authorities of a backflow incident for which the technician had personal knowledge has occurred.]The certified person has failed to notify proper authorities of a backflow incident for which the technician had personal knowledge, as required by R309-305-6(1);

(f)[f.] [There is evidence that a]The certified person has implemented a change of the design, material or operational characteristics of a backflow prevention assembly that is in use, and which change has not been authorized by the Executive Secretary; or[has occurred.]

(g) [7.3.1] Suspension or revocation of a Technician's certificate will be in writing and will state the reasons for such actions and available appeal procedures.]Disasters or "Acts of God", which could not be reasonably anticipated or prevented, shall[will] not be grounds for suspension or revocation actions.[

7.4 Appeal Procedures: Any individual who receives a notice of suspension or revocation may, within 30 days of receipt, make a written request for an appeal to the Executive Secretary of the Safe

Drinking Water Committee for a hearing before that Committee. The Committee shall follow the procedures for such a hearing as set forth in the Utah State Code.]

[R309-302-8.]R309-305-9. Fees.

(1)[8.1] Fees: The fees for certification shallwill be submitted in accordance with Section 63-38-3.2[63-38-3].

(2) All fees shallwill be deposited in a special account to defray the costs of administering the Cross Connection Control and Certification programs.

(3)[8.2] Renewal Fees: The renewal fee for all classes of Technicians shallwill be in accordance with Section 63-38-3.2[63-38-3].

(4)[8.3] All fees shallwill be deposited in a special account to defray the cost of the program.

(5)[8.4] All fees are non-refundable.

[R309-302-9.]R309-305-10. Training.

(1)[9.1] Training: Minimum training course curriculum, written tests and performance tests shallwill be established by the Commission[Subcommittee] and implemented by the Secretary of the Commission[Subcommittee] for both the Technician courses[Technicians course] and the renewal courses[short course].

(a) The length of the initial certification course for a Class I cross connection control program administrator shall be a minimum of 32 hours including examination.

(b) The length of the initial certification course for a Class II backflow assembly tester shall be a minimum of 32 hours excluding examination.

(c)[9.1.1] The length of each[the] renewal course shall be a minimum of 16 hours[not exceed two days] including the renewal examination (both written and performance examinations["hands on"]).

[R309-302-10.]R309-305-11. Cross Connection Control Commission[Subcommittee].

(1)[10.1] Appointment of Members: A Cross Connection Control Commission[Subcommittee] shallwill be appointed by the [Safe-]Drinking Water Board[Committee] from nominations made by cooperating agencies.

(2)[10.2] Responsibility: The Commission[Subcommittee] is charged with the responsibility of conducting all work necessary to promote the cross connection program as well as recommending qualified individuals for certification, and overseeing the maintenance of necessary records.

(3)[10.3] Representative Agencies: The Commission[Subcommittee] shall consist of seven[five] members:

(a)[4-] One member (nominated by the League of Cities and Towns) shall represent a community drinking water supply.

(b)[2-] One member (nominated by the Utah Pipes Trades Education Program) shall represent the plumbing trade and must be a licensed Journeyman Plumber[and Class II or III Backflow Technician].

(c)[3-] One member (nominated by the Utah Mechanical Contractors Association) shall represent the mechanical trade contractors.

(d)[4-] One member (nominated by the [Safe-]Drinking Water Board[Committee]) shall represent the [Safe-]Drinking Water Board[Committee].

(e)[5-] One member (nominated by the Rural Water Association of Utah) shall represent small water systems.

(f) One member (nominated by the Utah Chapter American Backflow Prevention Association) shall represent Class II Backflow Technicians and shall be a Class II or III Backflow Technician.

(g) One member (nominated by the Utah Association of Plumbing and Mechanical Officials) shall represent the plumbing inspection official and shall be a licensed plumbing inspector.

(4)[10.4] Term: Each member shall serve a two year term. At the initial meeting of the Commission[Subcommittee], lots shallwill be drawn corresponding to two one and three two year terms. Thereafter, all Commission[Subcommittee] members' terms shallwill be on a staggered basis.

(5)[10.5] Nominations of Members: All nominations of Commission[Subcommittee] members shallwill be presented to the [Safe-]Drinking Water Board[Committee], which reserves the right to refuse any nomination.

(6)[10.6] Unexpired Term: An appointment to succeed a Commission[Subcommittee] member who is unable to complete his full term shall be for the unexpired term only, and shall be nominated to, and appointed by, the [Safe-]Drinking Water Board[Committee] in accordance with R309-305-11(1).[R309-302-10.1.]

(7)[10.7] Quorum: At least four Commission[three Subcommittee] members shall be required to constitute a quorum to conduct the Commission's[Subcommittee's] business.

(8)[10.8] Officers: Each year the Commission[Subcommittee] shallwill elect officers as needed to conduct its business.

(a)[10.8.1] The Commission[Subcommittee] shall meet at least once a year.

(b)[10.8.2] All actions taken by the Commission[Subcommittee] shallwill require a minimum of four[three] affirmative votes.

[R309-302-11.]R309-305-12. Secretary of the Commission[Subcommittee].

(1)[11.1] Appointment: The Executive Secretary of the [Safe-]Drinking Water Board[Committee] shallwill appoint, with the consent of the Commission[Subcommittee], a staff member to function as the Secretary to the Commission[Subcommittee]. This Secretary shallwill serve to coordinate the business of the Commission[Subcommittee] and to bring issues before the Commission[Subcommittee].

(2)[11.2] Duties: The Secretary's duties shallwill be to:

(a)[e-] act as a liaison between the Commission[Subcommittee], certified Technicians, public water suppliers, and the public at large;

(b)[b-] maintain records necessary to implement and enforce these rules;

(c)[e-] notify sponsor agencies of Commission[Subcommittee] nominations as needed;

(d)[d-] coordinate and review all cross connection control programs, certification training and the certification of Backflow Technicians;

(e)[e-] serve as a source of public information for Certified Technicians, water purveyors, and the public at large;

(f)[f-] receive and process applications for certification;

(g)[g-] investigate and verify all complaints against or concerning certified Backflow Prevention Technicians, and advise the Executive Secretary of the [Safe-]Drinking Water Board[Committee] regarding any enforcement actions that are being recommended by the Commission[Subcommittee] as outlined in Section R309-302-7.4];

(h) [+] develop and administer examinations;
 (i) [+] review and correct examinations.
 (3) The Secretary to the Commission is also responsible for making recommendations to the Executive Secretary regarding backflow technician certification as provided in these rules.

KEY: drinking water, cross connection control, backflow assembly tester[environmental protection, administrative procedure]

[1990]2004

Notice of Continuation April 10, 2000

19-4-104(4)(a)

63-46b-4

▼ ————— ▼

Human Services, Administration, Administrative Services, Licensing

R501-2 Core Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26925

FILED: 01/30/2004, 15:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the amendment to Rule R501-2 is to make the rule clearer and more easily understood and broaden the base on who is required to have a background screening completed and approved, which includes all staff, management, and board members that may have any contact with the clients.

SUMMARY OF THE RULE OR CHANGE: The reorganization of Rule R501-2 is to make the content more easily understood, with a clarification of the terms used in the rule, the safety of the clients, and having documents posted properly and in plain view so the clients, their family, and visitors are aware of the standing of the facility with the Office of Licensing.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Other than for the cost of copying the revised rule, there will be no additional cost or savings to the State Budget.

❖ LOCAL GOVERNMENTS: Local governments have no additional cost because the changes in the rule have been for clarification and broader definition of the already existing rule and other that the facilities complying with local government's regulations, there is no additional cost to local governments.

❖ OTHER PERSONS: The changes in this rule will produce no additional costs or savings to other persons because the rule changes are for clearer understanding and expanded definition and not for physical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the changes made in this rule are more for clarification and better definition of terms, it was determined that there would be no additional cost or savings to the affected persons unless they opt to make changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: With the type of changes made with this rule, there will not be a fiscal impact on businesses.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Bohi at the above address, by phone at 801-538-4153, by FAX at 801-538-4553, or by Internet E-mail at jbohi@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-2. Core [Standards.]Rules.

R501-2-1. Definition.

Core [Standards.]Rules are required[the license requirements] for Human Service Programs, [as] listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, [hereinafter referred to as Office,] shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office of Licensing will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

- A. the administration and maintenance of client and service records;[and]
- B. staff qualifications; and
- C. staff to client ratios.

R501-2-2. Program Administration.

A. The program shall have a written statement of purpose to include the following:

1. program philosophy,
2. description of long and short term goals, this does not apply to social detoxification or child placing adoption agencies,
3. description of the services provided,
4. the population to be served,
5. fee policy,
6. participation of consumers in activities unrelated to treatment plans, and

7. program policies and procedures which shall be submitted prior to issuance[at time] of an initial licensing.

B. Copies of the above statements shall be available at all times to the Office of Licensing upon request. General program information shall be available to the public.

C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.

D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:

1. program management,

2. maintenance of complete, accurate and accessible records, and

3. record retention.

E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.

F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.

G. All programs which serve minors or vulnerable adults shall submit identifying information for background screening [for] of all [staff] adult persons associated with the licensee and board members who have access to children and vulnerable adults in accordance with R501-14 and R501-18.

H. The program shall comply with all applicable National Interstate Compact Laws.

I. A licensed substance abuse treatment program shall complete the [Uniform Facility Data Set Survey] National Survey of Substance Abuse Treatment annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug [a] Abuse Patient Records, 42 CFR Part 2.

J. The program's license shall be posted where it is easily read by consumers, staff and visitors[in a conspicuous place on the premises]. See also R501-1-5-F. The program shall post Civil Rights License on Notice of Agency Action, abuse and neglect reporting and [Americans With Disabilities Act, referred to as ADA,] other notices as applicable.

K. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

L. Programs providing foster or proctor care services shall adhere to the following:

1. approve homes that comply with Foster Care Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.

2. foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and training plan.

3. the agency must have a procedure to revoke or deny home approval.

4. the agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

5. planning, with participation of the child's legal guardian for care and services to meet the child's individual needs.

6. obtaining, coordinating and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.

7. providing ongoing supervision of foster parents to ensure the quality of the care they provide.

R501-2-3. Governance.

A. The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. The[+] governing body's responsibilities shall include the following:

1. to ensure program policy and procedures compliance,

2. to ensure continual compliance with relevant local, state and federal requirements,

3. to notify the Office of Licensing within 30 days of changes in program administration and purpose, [according to R501-2-2.]

4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern".

5. to ensure that the program has adequate staffing as identified on the organizational chart,

6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and

7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the programs renews its license to complete the necessary student forms including youth education forms.

B. The governing body shall be one of the following:

1. a Board of Directors in a non-profit organization; or

2. commissioners or appointed officials of a governmental unit; or

3. Board of Directors or individual owner or owners of a for-profit organization[, and]

4. for Child Placing Adoption Agencies, a Board of Directors. The Board members shall not be owners, employees, or paid consultants of the agency].

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff and identifies by name the staff person who fills each position on the chart.

E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year. Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office of Licensing, to include the following:

1. attendance,

2. date,

3. agenda items, and

4. actions.

R501-2-4. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document its ownership and incorporation.

R501-2-5. Record Keeping.

The program shall have, [if available and appropriate,] a written record for each consumer to include the following:

A. [d] Demographic information to include Medicaid number as required.

B. [b] Biographical information,

C. [p] Pertinent background information, including the following;

1. personal history, including social, emotional, psychological and physical development,

2. legal status,

3. emergency contact with name, address and telephone number, and

4. photo as needed[.]

D. [h] Health records of a consumer including the following:

1. immunizations, [this is not applicable to adult programs] for children only,

2. medication,

3. [records of] physical examinations, dental, and visual examinations, and

4. other pertinent health records and information[.]

E. [s] Signed consent forms for treatment and signed Release of Information form.

F. [e] Copy of consumer's individual treatment or service plan,

G. [a] A summary of family visits and contacts, and

H. [a] A summary of attendance and [leaves] absences.

R501-2-6. Direct Service Management.

A. Direct service management, as described herein, is not applicable to social detoxification[, residential support or child placing adoption agencies]. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:

1. legal status[according to State law],

2. age and sex of consumer,

3. consumer needs or problems best addressed by program,

4. program limitations, and

5. appropriate placement.

B. The program shall have a written admission policy and procedure to include the following:

1. appropriate intake process,

2. age groupings as approved by the Office of Licensing,

[2] 3. pre-placement requirements,

[3] 4. self-admission,

[4] 5. notification of legally responsible person, and

[5] 6. reason for refusal of admission, to include a written, signed statement.

C. Intake evaluation.

1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.

2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.

3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.

D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record, with copies available to involved persons. It shall include the following:

1. rules of program,

2. consumer and family expectations,

3. services to be provided and cost of service,

4. authorization to serve and to obtain emergency care for consumer,

5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and

6. sanctions and consequences.

E. Consumer treatment plan shall be individualized, as applicable according to the following.

1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.

2. The plan shall include the following:

a. findings of intake evaluation and assessment,

b. measurable long and short term goals and objectives,

1) goals or objectives clearly derived from assessment information,

2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,

3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and

4) evidence of family involvement in treatment plan, unless clinically contraindicated,

c. specification of daily activities, services, and treatment, and

d. methods for evaluation,

3. Treatment plans[.]

a. [P] plans shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a [licensed] clinical professional if applicable. Thereafter[.] treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan. [Plans for non-Medicaid consumers shall be clinically reviewed within six months of admission and at least annually thereafter.]

b. Where applicable, treatment or program plans shall be written to include the required components of Division of Services for People With Disabilities program plan.]

4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.

5. Reports on the progress of the consumer shall be available to the applicable Division, the consumer, or the legally responsible person.

6. Treatment record entries shall include the following:

a. identification of program,

b. date and duration of services provided,

c. description of service provided,

d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and

e. documentation of review of consumer's record to include the following:

1) signature,

2) title,

3) date, and

4) reason for review.

7. Transfer and Discharge

- a. [A]a discharge plan shall identify resources available to consumer.
- b. [T]the plan shall be written so it can be understood by the consumer or legally responsible party.
- c. [W]whenever possible the plan shall be developed with consumers participation, or legally responsible party if necessary. The plan shall include the following:
 - 1) reason for discharge or transfer,
 - 2) adequate discharge plan, including aftercare planning,
 - 3) summary of services provided,
 - 4) evaluation of achievement of treatment goals or objectives,
 - 5) signature and title of staff preparing summary, and
 - 6) date of discharge or transfer.
- d. The program shall have a written policy concerning unplanned discharge.

8. Incident or Crisis Intervention records

- a. The program shall have written policies and procedures which includes: reporting to program manager, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, strip searches [for the reporting and documentation of deaths of consumers, injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents,] and other situations or circumstances affecting the health, safety, or well-being of consumers.
- b. [R]records shall include the following:
 - 1) summary information,
 - 2) date, time of emergency intervention,
 - 3) action taken,
 - 4) employees and management responsible and involved,
 - 5) follow up information,
 - 6) list of referrals,
 - 7) signature and title of staff preparing report, and
 - 8) records shall be signed by management staff.
- c. [T]the report shall be maintained in individual consumer records.

d. [W]when an incident involves abuse, [or]neglect, serious illness, violations of the Provider Code of Conduct [of a consumer,] or death of a consumer, a program shall:

- 1) [prepare a preliminary written report within 24 hours of the incident, and]notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.
- 2) [notify the Office, the legally responsible person, and the appropriate law enforcement authority]a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident[.]

F. Intensive Supervision and Tracking: For those programs providing intensive supervision services, a designated staff member shall provide services to the consumer as frequently as determined in the treatment plan or contract. A consumer's record shall document, in activity logs, the date, amount of time spent, and the specific activity provided to the consumer. If any one consumer has more than one staff assigned to provide intensive supervision, this action shall be justified in the consumer's record and cleared by the licensed clinical supervisor.]

R501-2-7. Behavior Management.

A. [Behavior management methods, as described herein, are not applicable to child placing adoption agencies—]The program shall have on file for public inspection, a written policy and procedure for the methods of behavior management. These shall include the following:

1. definition of appropriate and inappropriate behaviors of consumers,
2. acceptable staff responses to inappropriate behaviors, and
3. consequences.

B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually[, or more often if needed].

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

E. [Staff who shall be responsible for the design and supervision of the behavior management procedure shall be at least 21 years of age.]Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

F. Programs using time out or seclusion methods shall comply with the following:

1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:

- a. Time-out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.

b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time-out or seclusion.

c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.

d. Any one time-out or seclusion shall not exceed 4 hours in duration.

e. Staff is required to maintain a visual contact with a child in time-out or seclusion at all times.

f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time-out or seclusion shall follow the safety plan.

g. A child placed in time-out or seclusion shall not be in possession of belts, matches, weapons, or any other potentially harmful objects or materials that could present a risk or harm to the child.

2. Time-out or seclusion areas shall comply with the following:

a. Time-out or seclusion rooms shall not have locking capability.

b. Time-out or seclusion rooms shall not be located in closets, bathrooms, or unfurnished basements, attic's or locked boxes.

c. A time-out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time-out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.

d. All time-out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department

G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.

R501-2-8. Rights of Consumers.

A. The program shall have a written policy for consumer rights to include the following:~~[, numbers 10-13 do not apply to child placing adoption agencies.]~~

1. privacy of information and privacy for both current and closed records,

2. reasons for involuntary termination and criteria for readmission to the program,

3. freedom from potential harm or acts of violence to consumer or others,

4. consumer responsibilities, including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity,

9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional~~[or supervisory personnel]~~,

10. a list of people, whose visitation rights have been restricted through the courts,

11. the right to send and receive mail providing that security and general health and safety requirements are met,

12. defined smoking policy in accordance with the Utah Clean Air Act, and

13. statement of maximum sanctions and consequences, reviewed and approved by the Office of Licensing.

B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

R501-2-9. Personnel Administration.

A. The program shall have written personnel policies and procedures to include the following:

1. employee grievances,

2. lines of authority,

3. orientation and on-going training,

4. performance appraisals,

5. rules of conduct, and

6. sexual and personal harassment.

B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the

program and facility. The director or ~~[a responsible staff member or designated management person]~~ shall be available at all times during operation of program.

C. The program shall have a personnel file for each employee to include the following:

1. application for employment,
2. applicable credentials and certifications,
3. initial medical history if directed by the governing body,
4. tuberculin test if directed by the governing body,
5. food handler permit, where required ~~by local health authority~~,

6. training record,

7. annual performance evaluations,

8. I-9 Form completed ~~as applicable~~,

9. comply with the provisions of R501-14 and R501-[+5]18 for background screening, and

10. ~~a~~ signed copy of the current Department of Human Services Provider Code of Conduct.

~~[D. Staff shall have access to his or her personnel file in accordance with State and Federal law.~~

~~E]D. The program shall follow a written staff to consumer ratio, which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-3, R501-7, R501-8, R501-11, and R501-16.~~

~~[F]E. The program shall employ or contract with trained or qualified staff to perform the following functions:~~

1. administrative,
2. fiscal,
3. clerical,
4. housekeeping, maintenance, and food service,
5. direct consumer service, and
6. supervisory.

~~[G]F. The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.~~

~~[H]G. Treatment shall be provided or supervised by professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.~~

~~[I]H. The governing body shall ensure that all staff are certified and licensed as legally required.~~

~~[J]I. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.~~

~~[K]Nursing services, when provided, shall be in accordance with technical skills defined in the Utah Nurse Practice Act.~~

~~[L]J. The program shall provide interpreters for consumers~~[;]~~ or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.~~

~~[M]K. The program shall retain the personnel file of an employee after termination of employment, in accordance with accepted personnel practices.~~

~~[N]L. A program using volunteers, substitutes, or student interns, shall have a written plan to include the following:~~

1. direct supervision by a program staff,
2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,
3. background screening,
4. a record maintained with demographic information, and

5. signed copy of the current Department of Human Services Provider Code of Conduct.

[O]M. Staff Training

1. Staff members shall be trained in all policies of the program, including the following:

- a. orientation in philosophy, objectives, and services,
- b. emergency procedures,
- c. behavior management,

~~[d] statutory responsibilities of the program, including rights for people with disabilities according to the Americans With Disabilities Act;~~

~~[e] current program policy and procedures, and~~

~~[f]e. other relevant subjects.~~

2. Staff shall have completed and remain current in a certified first aid and CPR, such as or comparable to American Red Cross[program as required].

3. Staff shall have current food handlers permit as required by local health authority.

4. Training shall be documented and maintained [~~in individual personnel files~~on-site].

R501-2-10. Infectious Disease.

The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.

R501-2-11. Emergency Plans.

A. The program shall have a written plan of action for disaster and casualties to include the following:

- 1. designation of authority and staff assignments,
- 2. plan for evacuation,
- 3. transportation and relocation of consumers when necessary, and
- 4. supervision of consumers after evacuation or relocation.

B. The program shall [inform]educate consumers on how to respond to fire warnings and other instructions for life safety including evacuation.

C. The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.[.]

~~D. Death, serious illness, or injury of a consumer or staff at the program shall be reported within 24 hours to a guardian and to the Office.]~~

R501-2-12. Safety.

A. Fire drills in non-outpatient programs, shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.

B. The program shall provide access to an operable 24-hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.

C. The program shall have an adequately supplied first aid kit in the facility such as recommended by American Red Cross.

D. [Programs maintaining weapons at the facility shall assure that the weapons and ammunition are securely locked. Weapons kept at the facility and on the premises will be inaccessible to consumers at all times and rendered inoperable if possible]All persons associated with the program having access to children or vulnerable adults who have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and

ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

R501-2-13. Transportation.

A. The program shall have written policy and procedures for transporting consumers.

B. In each program or staff vehicle, used to transport consumers, there shall be emergency information which includes at a minimum, the name, address and phone number of the program ~~[or]~~and an emergency telephone number.

C. The program shall have means, or make arrangement for, transportation in case of emergency.

D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

E. Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by American Red Cross.

R501-2-14. Categorical [Standards]Rules.

In addition to Core [Standards]Rules, Categorical [Standards]Rules are specific regulations which must be met for the following:

- A. Child Placing Adoption Agencies R501-7,
- B. Day Treatment R501-20,
- C. Intermediate Secure Treatment Programs for Minors R501-16,
- D. Outdoor Youth Programs R501-8,
- E. Outpatient Treatment R501-21,
- F. [Outpatient Domestic Violence Perpetrator Treatment]Foster Care R501-12,
- G. Residential Treatment R501-19,
- H. Residential Support R501-22,~~[and]~~
- I. Social Detoxification R501-11~~[.]~~ and
- J. Assisted Living for DSPD Residential R710.

R501-2-15. Single Service Program [Standards]Rules.

Core [Standards]Rules of the Office of Licensing do not apply to single service programs.

Single services program [standards]Rules are the regulations which must be met for the following:

- A. Adult Day Care, which [standards]Rules are found in R501-13,
- B. Adult Foster Care, which [standards]Rules are found in R501-17~~[.]~~ and
- C. Child Foster Care, which standards are found in R501-12.]

KEY: licensing, human services

[May 6, 2003]2004

Notice of Continuation November 25, 2002

62A-2-101 et seq.

**Human Services, Administration,
Administrative Services, Licensing**

R501-7

Child Placing Agencies

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26904

FILED: 01/16/2004, 12:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to Rule R501-7 have been made to make the rule cleaner in language and the expansion of changes necessary for the licensing of Child Placing Adoption Agencies.

SUMMARY OF THE RULE OR CHANGE: The changes have been made to create better definitions of the responsibilities of agencies for the protection of the child/birth parent/and adoptive parents.

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

ANTICIPATED COST OR SAVINGS TO:

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

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the changes made in this rule are more for clarification and better definition of terms, it was determined that there would be no additional cost or savings to the affected persons unless they re-write the policy manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: With the type of changes made in this rule, there will not be any fiscal impact on businesses.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Bohi at the above address, by phone at 801-538-4153, by FAX at 801-538-4553, or by Internet E-mail at jbohi@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.**R501-7. Child Placing Adoption Agencies.****R501-7-1. Authority and Purpose.**

[Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the office of Licensing shall license child placing agencies.]A. This rule is authorized under Section 62A-2-106.

B. This rule establishes standards for licensing agencies to provide child placing adoption services.

[R501-7-2. Objective]

Pursuant to Section 62A-4a-205.6, the primary objective of a child placing agency shall be to place children permanently in adoptive homes. Whenever that is unachievable, foster home placements shall become an acceptable secondary objective.

]

R501-7-[3]2. Definitions.

A. "Adoption" is defined in Section 78-30-16.

B. "Child placing adoption agency" means an individual, agency, firm, corporation, association or group children's home that engages in child placing.

C. "Adoption Services" is defined in Section 62A-4a-101.

D. "Birth Parent" is defined in Section 78-30-16.

E. "Child placing" means [the] receiving, accepting, or providing [of] custody or care for a child [under 18 years of age]. Where possible, this shall be done permanently in accordance with 62A-2-101(2), or on a temporary basis, [for the purpose of finding a person to adopt the child or placing a child in a home for adoption.

F. "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.

G. "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

H. "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

I. "Genetic and Social History" is defined in Section 78-30-16.

J. "Health History" is defined in Section 78-30-16.

K. "Intercountry Adoption" means the adoption of a child from a foreign country, whether the adoption is completed in the child's native country or in this State.

L. "Mental Health Therapist" is defined in Section 58-60-102.

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

N. "Special needs" means a child who is three years of age or older, a sibling group, a child with mental, physical, medical or emotional disabilities, or a child who has a biological family history

likely to result in temporary or permanent mental, physical, or emotional disabilities.

O. "Unmarried biological father" is defined in Section 78-30-4.11.

R501-7-[4]3. Legal Requirements[—for Organizations Administration of Child Placing Agencies].

[A. Administration

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

[2]B. [Multiple Service Agency: When services for birth parents are provided in the same agency that provides adoption services, it is necessary to ensure that full consideration is given to the needs of birth parents, as well as to those of the child. Moreover, the agency shall advertise to the public that it does provide services for birth parents who are not considering adoption, refer to R501-7-6]Child placing adoption agencies that do not provide housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

[3]C. [Selection and Placement:—]A child placing adoption agency [for adoption or foster care] shall not[:][

a. deny to any person the opportunity to become an adoptive or a foster parent on the basis of race, color, or national origin of the person, or of a child, involved; or

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

[4]D. [Legal Responsibility for Child: The]A child placing adoption agency shall be legally responsible for [the well-being of]the child following relinquishment of the child to the adoption agency until the adoption is finalized, [or]unless [the]a court of competent jurisdiction places legal responsibility with another party. [If the child cannot be adopted, the agency shall continue to be legally responsible for the child, i.e., for making referrals to the appropriate service for continuing care until the agency is discharged.]

[5. Legal and Other Documents: The agency shall have available and keep in a confidential file all pertinent legal and other documents as available and appropriate, including but not limited to the following:

- a. birth records;
- b. baptismal certificates;
- c. an original of the transfer of parental rights or relinquishment;
- d. decree of termination of parental rights;
- e. copies of divorce papers;
- f. death certificates of adoptive family members or birth parents;
- g. affidavits in cases where a husband is not the father of the child;
- h. statement of the birth parents to release information to mutually agreed upon individuals, or waiver of confidentiality;

i. statements of birth and adoptive parents regarding their agreement to exchange information and the conditions, if any, pursuant to contact following placement and legal adoption, and

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

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

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

H. A child placing adoption Agency shall comply with the Interstate Compact for Placement of Children.

R501-7-4. Administrative Requirements.

[6. Minimum Qualifications of Staff: The Executive Director and other staff of the agency shall meet the standards listed below. Department of Human Services Offices staff will be required to meet the personnel and administrative standards as set by State Personnel Policy.

7. Executive Director:

a. The Board of a private agency shall select the Executive Director and delegate to the Executive Director the responsibility for administration of the agency within the general policies of the Board.

b. The Executive Director of a licensed child placing agency shall be graduated from an accredited four year college or university, have a master's degree in social work and shall be licensed in accordance with 58-60-204,105 and 58-60-404,405 as a clinical social worker, certified social worker, or professional counselor. In agencies where the Executive Director does not have the appropriate professional license, there shall be a staff member with the appropriate licensure designated as Social Services Director for the agency.

c. In addition, staff identified shall have had two years of full-time paid professional employment in services to children in a social service setting, one of which must have been in a supervisory or administrative capacity.]A. A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who have direct contact with clients.

1. Each social work supervisor shall be licensed in this state as a mental health therapist and have at least two years of full time, paid, professional experience in a licensed child placing adoption agency.

2. A social work supervisor may not supervise more than eight staff and volunteers who have direct contact with clients.

3. An Executive Director who is licensed in this state as a mental health therapist and has at least two years of full time, paid, professional experience in a licensed child placing agency may serve as a social work supervisor, and may not supervise more than four staff and volunteers who have direct contact with clients.

4. Casework Supervisor: If an agency has six or more professional staff besides the Executive Director, provisions shall be made for a certified social worker or professional counselor to supervise the additional staff. The certified social worker or professional counselor must have at least one year of full time paid professional experience in social work. In general, the ratio shall not exceed one certified social worker or professional counselor to eight caseworkers.

9. Social Service Worker: All service workers shall be licensed to practice social work under the laws of the State of Utah. B. Individuals who provide services to birth parents, children, or adoptive applicants shall maintain a current professional license as required by the Utah Mental Health Professional Practice Act.

[10. Workloads: The agency shall establish full time workload standards for staff, taking into consideration average time for satisfactory completion of intake; assessment and preparation of adoptive applicants; and post placement and post legal adoptive services to the birth, adoptive parents and adoptive persons. Under no circumstance shall the workload for social work staff working with children under the age of five exceed 20 active cases; for staff working with prospective adoptive parents prior to approval of the family exceed 30 active cases; for staff working with prospective adoptive parents, following approval exceed 60 active cases; for staff working with birth parents exceed 25 active cases; and for staff working with older or special needs children exceed 15 active cases.

11. Staff Development: The agency shall provide opportunities for staff to enhance professional growth through supervision, in-service training and educational leave. The agency shall maintain current adoption literature.]C. A child placing adoption agency shall notify the Office Of Licensing of any changes it makes to its policies or procedures and shall provide a written copy of any changes within five business days.

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

1. dissolving or ceasing to provide child placing services,
2. adding or eliminating in-state, out-of-state, special needs, or international services,
- 3 changing ownership or name, or
- 4 transferring its cases to another agency, person, or records archive.

R501-7-5. Ethical Conduct.

[+2]A. [Ethical Conduct:]A child placing adoption agency shall [operate in an ethical manner, including the following:

a. Its governing body, voluntary board, staff and consultants are not favored in applying for or receiving the services of the agency;

b. It receives no payment or other considerations for the referral of any applicant or client;

c. It provides no payment or other considerations to any services provider or other organization or individual for any referral of any applicant for the agency's services.]

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

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

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

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

5. not require its clients to use or pay for specified attorneys or other service providers, shall inform clients that they are free to

select independent attorneys and other service providers, and shall not charge clients fees for services that clients obtain independently; and

6. [d. It prohibits the directed]not refer[al,] or steer[ing, of its applicants, clients, and their families]any individual to any private practice in which [it's]the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families [staff or consultants may be]are engaged.

[e. It maintains a record of the ownership of all its properties and of all financial transactions it enters into with respect to such properties;

[f]B. The members of the governing body of [a private or public]a child placing adoption agency shall disclose, in writing, any[have ne] direct or indirect financial interest in [the assets or leases of]the agency[; any member who individually or as part of business or professional firm is involved in the business transactions or current professional services of the agency shall disclose this relationship and shall not participate in any vote taken in respect to such transactions or services].

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

R501-7-6 Fees.

A. A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents. A child placing adoption agency shall not charge adoptive parents for any fees or expenses that were not included in the written disclosure. A child placing adoption agency shall identify which fees may be non-refundable.

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

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

1. The agency shall retain receipts documenting the actual costs of goods and services provided.

2. A child placing adoption agency shall not directly charge adoptive parents for the birth mother's travel or postnatal expenses.

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

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

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

F. A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services

provided to her by the prospective adoptive parents or the child placing adoption agency during her pregnancy.

R501-7-7 Documentation.

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

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

1. train and supervise employees and volunteers;
2. identify a child who may be available for adoption;
3. identify or refer a person who is considering relinquishing a child for adoption;
4. provide services in cases where the agency does not obtain legal custody of a child;
5. verify the credentials of other individuals and agencies it works with to obtain relinquishments and place a child;
6. offer counseling services by a licensed mental health therapist to a person who is considering relinquishing a child for adoption or adopting a child;
7. inform birth parents and adoptive parents of their rights and responsibilities in writing;
8. monitor who has legal and physical responsibility for the child at all times;
9. secure the necessary relinquishments and facilitate the termination of parental rights;
10. recruit and assist adoptive families to meet the needs of available children, including but not limited to special needs children;
11. obtain a background study on a child or a home study on a prospective adoptive parent;
12. evaluate prospective adoptive parents;
13. process appeals of home study denials;
14. assess the best interests of a child and the appropriate adoptive placement for the child;
15. monitor a case post-placement until the adoption is final;
16. ensure the child is receiving all necessary services prior to finalization of adoption;
17. assume custody and provide any needed services for the child when necessary because of disruption;
18. arrange to provide foster care prior to placing the child in an adoptive home;
19. preserve the confidentiality of client files;
20. respond to requests for information from birth families, adoptees, adoptive families, and others;
21. preserve client records when a case is closed and in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify each client where the records shall be stored; and
22. enable record retrieval by individuals with a right to access them;

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

[43]D. [Case Records: The]A child placing adoption agency shall maintain a case [record of]file for each child, birth parent, and prospective adoptive parent. Each case file shall cross-reference related files.[accepted for care, of the family, and of each adoptive applicant, from the time of the application for service through the completed legal adoption and termination of the agency's service.

As a minimum, the record shall contain the following information]Each case file shall include:

- [a]1. application [and reason] for service,
 - [b]2. all [social study,]studies and evaluations, whether or not finalized, including but not limited to those required by Section 78-30-3.5;
 - [c] problems and service of the client to these services;
 - [d]3. needs assessment;
 - 4. [progress report, at least quarterly, to include the following:]case notes
 - [1) describing services provided[;]
 - [2) response of the client to these services, and
 - [3) results,]
 - [e] closure, a brief summary of what was accomplished and reason for closure, and
 - [f]5. [dates, places and other pertinent information]the individual's adjustments, interactions and relationships;
 - 6. original or certified copies of government and religious birth records;
 - 7. original or certified copies of relinquishment or transfer of birth mother's and birth father's rights;
 - 8. original or certified copies of decree of termination of birth mother's and birth father's rights;
 - 9. certified copies of marriage certificates, divorce papers, custody and visitation orders, if any;
 - 10. certified copies of death certificates, if any, of birth parents;
 - 11. original or certified copy of affidavit that birth mother's husband is not the child's father, if applicable;
 - 12. waiver of confidentiality or release of information authorization, if applicable;
 - 13. statements of birth and adoptive parents regarding any agreements to exchange information or maintain contact;
 - 14. current and historical physical, psychological, genetic and developmental health information;
 - 15. original or certified copy of the order of adoption; and
 - 16. in the event that any records identified in this rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.
- [g. Adoptive parents, adoptees, and birth parents shall be encouraged to provide updated information to be added to the file at any time prior to and following finalization proceedings. This updated information may include medical, psychological and social information.]
- [h. Case records shall be continuous records of adjustment, interaction, relationships, physical and mental conditions, growth and development. All records and information shall be confidential.]E. A child placing adoption agency shall maintain current health, fire, zoning, business, and other permits, certificates, or licenses at each facility it operates, as required by state or local law;
- [44]F. [Record Retention: At the completion of the adoption all records pertaining to the adoption must]All cases files shall be retained for a minimum of 100 years from the date the case is closed.
- [45]G. [Confidentiality of Records:]All adoption records shall be [treated as]confidential and shall be [retained]maintained in a locked[;] [metal]file[;]when not in active use. Adoption records shall be accessible only by authorized agency employees[to designated personnel only]. No information shall be shared with any

person without the appropriate consent forms, except as required by law.

— 16. Location and Housing: The agency shall be located in an area convenient to the clients it expects to serve. It shall be housed in a setting that is attractive, well maintained and comfortable.

— 17. Office Space: The facility shall maintain offices to meet the needs of clients being served.

— 18. Resources: The agency shall have financial resources to support the services offered.

— 19. Payment of Fees: The agency may charge birth parents and adoptive parents for cost of services provided. However, under no circumstance shall the provision of services to birth parents be contingent upon the ability to pay. A signed fee schedule shall be on file indicating cost of each service. Fees may be charged according to a sliding scale, based upon ability to pay in relation to income or can be set at a uniform amount with a provision in agency policy for reducing or waiving the fee when indicated.

— 20. Itemization of Expenditures:

An itemization of all allowable expenditures on behalf of birth parents shall be on file. The itemization shall be signed by birth parents and adoptive applicant. If any cost appears to be greater than the ordinary or usual costs, the agency must show that the expenditure was fit and appropriate. The agency may pay reasonable costs for the following:

- a. legal services related to the adoption;
- b. medical services related to pregnancy, birth, and post natal care for the birth mother and medical care for the child;
- c. emergency health related services for the birth mother needed to protect the health and well being of the fetus;
- d. housing, including utilities and basic telephone service;
- e. necessary transportation, including gasoline or public transportation;
- f. purchase of food, necessary household supplies, and personal hygiene or grooming products;
- g. clothing for the birth mother; and
- h. necessary mental health services for the birth mother during the pre and post natal period.
- i. For other expenses the agency must show that the expenditure was fit and appropriate for the birth parents beyond six weeks postpartum.

— 21. Itemization of Fees for Adoption:

An itemization of all adoption related expenses shall be filed with the court prior to the final decree of adoption.

— 22]H. [Statistics: The]A child placing adoption agency shall maintain and provide accurate annual statistics [on persons served, applications, and dispositions as a minimum]describing the number of applications received, services provided, the number of children, birth parents, and adoptive parents served, and the number of adoptions and disruptions, and the number of children in agency custody.]

— B. Indian Child Welfare Act: An agency which serves Indian children must have standards and procedures which also conform to the Indian Child Welfare Act, refer to pl 95-600.

R501 7 5. Services for Foster Care Program.

An agency's foster care program must meet the following requirements:

— A. Best Interests of Child: Foster family care is provided for and in behalf of the child under a plan that includes services for the child, the child's family, and supervision of, and support services for the foster family.

— B. Permanent Plans: Agency staff must work actively in coordinating services for children in DHS custody, their families, and foster families to return children to their own homes or to achieve permanent arrangements for their care. The agency must maintain written records which meet requirements of 42U.S.C.675, including a plan for the child's permanent placement within 60 days of placement.

— C. Intake Services: The agency must have a formal procedure for intake, including a procedure to establish the permanent plan for each child in DHS custody.

— D. Requirements for Foster Home Approval:

— 1. Licensed agencies that provide foster or proctor care shall only approve homes that comply with Foster Care Licensing Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.

— 2. Foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and a training plan.

— 3. The agency must have a procedure to revoke or deny home approval.

— 4. The agency must have a procedure for a foster parent to apply for a waiver of requirements.

— 5. The agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

— E. Payments: The agency must have a written policy stating the amount and schedule of payment to foster parents for cost of care and services. If the agency makes no payment, the agency shall have a written agreement stating the reasons.

— F. Requirements for Placement: The first consideration in placing a child in care shall be the welfare of the child. In determining where a child is placed the agency shall consider proximity to the child's home, placement in the least restrictive setting possible, the ability of the parents to visit; however, the welfare of the child shall override any of these considerations.

— G. Foster Care Services: The foster care services provided by an agency shall include:

— 1. Planning, with participation of the child's biological parents, for care and services to meet the child's individual needs.

— 2. Planning with biological parents, and with participation of the child where feasible, for stability and permanence in the care of the child. This must include a plan for the parental visits with the child.

— 3. Providing services to help the child's parents reestablish parental care, maintain parental rights, or where in the best interest of the child, terminate parental rights.

— 4. Providing a suitable foster family home for the child and planning, with foster parents for the child's supervision, education, health, recreation, and other needs and services. Placement of any child should consider the child's age, behavior, sex, the composition of the foster family, and skills of the foster parents.

— 5. Obtaining, coordinating, and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.

— 6. Providing ongoing supervision of foster parents to ensure the quality of the care they provide.

H. Termination of Supervision: Supervision of a child by a Division of DHS may only be terminated by court order, unless:

1. The child has been returned to his or her own home and has remained there for a period sufficient to indicate he or she has satisfactorily adjusted to that home;
2. The child has been legally adopted;
3. The child reaches the age of 18, unless the Juvenile Court retains jurisdiction up to age 21; or
4. The Division of DHS transfers responsibility for services to another agency.]

R501-7-[6]8. Services for Birth Parents.

[A] To ensure that adoption is a suitable plan for the child, and that the interests of children, birth parents, and adoptive parents are protected, comprehensive services must be made available for birth parents, both married and single.

B. Comprehensive services or referral for services, for birth parents shall be provided not as part of an adoption service, but as a separate service geared to the needs of birth parents, including those who are not considering adoption.

C. Support in Planning for the Child:

1. Birth parents shall be supported in making a decision for their child, based on complete and accurate information and without undue delay, including two face to face counseling sessions prior to relinquishment.

2. Birth parents shall be informed of their legal rights, obligations, and responsibilities during face to face counseling sessions; they should also receive support in considering what their decision will mean to them and to their child.] A. Child placing adoption agencies shall provide a minimum of two face-to-face counseling sessions prior to relinquishment to assure that:

1. birth parents' decisions to sign the relinquishment is voluntary; and

2. birth parents understand their decision is permanent, and that their parental rights and responsibilities shall end when a licensed child placing adoption agency accepts their relinquishment of parental rights or their parental rights are otherwise terminated in accordance with Title 78, Chapter 3a, Part 4, and Section 78-30-11.

B. Birth parents shall be provided complete and accurate information and their decision to relinquish or not relinquish their child shall be supported. Child placing adoption agencies shall not encourage or attempt to persuade a birth parent to relinquish a child.

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

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

4. Birth parents shall be treated with respect, consideration, fairness, and given full recognition of personal dignity and individuality.]

E. Birth parents shall be assisted in consider[ation]ing [and determination of]whether they want to disclose their identity[5] to the adoptee or the adoptive family, or hear about or from the child, directly or indirectly, in the future.

[D] Agencies cannot guarantee confidentiality in any adoption, nor can the agency guarantee any arrangements for contact and exchanges of information between birth parents and adoptive parents. Birth parents and adoptive parents shall be so advised.

E. Social Services to Birth Parents After Termination or

Transfer of Parental Rights: Services shall be available to birth parents after their rights and responsibilities are terminated, as well as after the adoption is finalized. The following services shall be provided to birth parents:

1. Help with the relinquishment process and immediate plans for their own lives.

2. A process where newly learned medical or genetic information that is important to the adopted child, birth parents, or adoptive family can be exchanged.]

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

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

[4. Information shall be shared regarding Utah's Mutual Consent Voluntary Adoption Registry.

F. Agency Records: Birth parents shall sign documents of services received during counseling and relinquishment.

G. Determination of Religion in Which the Child is to be Reared:

[4]H. The A child placing adoption agency's policies regarding the consideration of religion in the selection of adoptive families shall be [made] clearly stated in its initial communication with[to] birth parents and in writing.

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

[3] Agencies under religious auspices may choose to establish policies and practices that are consistent with their particular religious faith.

[H]J. [Involuntary termination of Parental Rights: The agency shall have the responsibility to]A child placing adoption agency shall initiate termination of parental rights proceedings [consistent with the applicable Utah statutes]in accordance with Title 78, Chapter 3a, Part 4.

I. Relinquishment of Parental Rights for Adoption: Counseling shall be provided to the birth parents who are planning to place their child for adoption so the decision can be made as early as possible. In the case of parents who voluntarily relinquish their parental rights to an authorized child welfare agency, proper legal procedures for the termination of parental rights should be ensured.

J. Emotional Readiness to Relinquish Parental Rights: Documents indicating parental willingness to place the child for adoption shall be signed in accordance with the parents' emotional readiness to make the definitive decision, and not in accordance with the immediate needs of an adoptive family.

K. Duration of Parental Responsibility: Parental legal responsibility shall end when an authorized child welfare agency accepts the relinquishment of parental rights and the parental rights are terminated.

L. Establishment of Paternity: Legal paternity proceedings shall not be required as a condition for adoption services.]K. Child placing adoption agencies that provide housing for expectant birth

mothers shall assure that such housing complies with the following minimum standards:

1. housing is in compliance with health, fire, zoning, and other applicable laws and regulations;
2. housing is clean, well-maintained and adequately furnished;
3. birth mothers shall have private bedrooms;
4. laundry equipment and supplies shall be available; and
5. adequate nutritious food, or resources to obtain food, is available.

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

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

R501-7-[7]9. Services for Children.

A. [Assessment of Children: When it has been] After the birth parents determine[d] that adoption is the best plan for [a]their child, an assessment shall be made within 30 days, or within the timeframe ordered by the court, to obtain information to assist in the placement process.

[+]B. [Determine whether the child's needs can best be met in adoptive placement, and if so,] A determination shall be made regarding what kind of adoptive family should be selected for the child. The selection of the adoptive family for a specific child shall be based on the family's ability to meet the individual needs of the child. The wishes of the birth parents, the adoptive parents, and when applicable, the child, shall be considered.

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

[3. Provide the child with needed information concerning the birth family when appropriate.

—B|D. [Developmental History:] A complete developmental history of the child [that is as complete as possible,] shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, [and if indicated, from] nurses, psychologists, and other consultants shall be included. The developmental history shall include[the following]:

1. birth and health history, and all evaluations;
2. [early development, particularly indications of the way the child has taken to like, i.e., locomotor development, feeding experiences, temperament, etc.,] descriptions of fine and gross motor skills, social, emotional, and cognitive development;
3. the child's adaptation to previous living experiences and situations[;];
4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, description of the child's behavior and separation experiences[;];
5. [determination]a description of the child's cultural and ethnic background,[and its impact on values and morals, and]
6. the child's language skills, [including second language capabilities and other] educational records, talents and interests.

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

1. [E]valuation of the [infant]child that includes a correlation and interpretation of all available information, [such as:] including but not limited to genetic[s] and laboratory, test results, [etc.]
2. the [M]medical care and immunizations received to date, [-]
3. [T]he nature and degree of any [existing handicap, complete information about the type of handicap and the concomitant]disability,
4. treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care[, if so indicated].

[D]E. [Psychological Testing:] Psychological testing for children should be used selectively and as a tool for observation and diagnosis[of current developments, if warranted].

[E]G. [Family History: Information should be] A child placing adoption agency shall obtain[ed] information about[from] the birth parents [about]and their family backgrounds to:

1. [Determine whether there are any significant hereditary factors or pathology, including illnesses of the birth mother or father, that may affect the child's development.]provide the adoptive family with the birth family's medical, genetic, social, and mental health history;
2. [Assist the adoptive parents and, eventually, the child to understand the family situation, the reasons for adoption, and the birth family histories.]provide the adoptive family with information about the talents, interests, and education of the birth parents;
3. provide the adoptive family with non-identifying information about other children born to either of the birth parents; and

[3]4. [Decide, in the case of older children who have lived with their birth families, which] identify characteristics which should be given consideration in selecting and preparing a child for an[-new] adoptive family.

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

[G]I. [Timing of Adoptive Placement: Infants under the age of two should] A child shall be placed with the[is] adoptive family[ies] at the earliest time possible after being freed for adoption[- and directly upon release from the hospital in the case of newborns].

[H]J. [Placement of Children Over Five Years of Age: When placing children over the age of five, care shall be taken to ensure that an adequate] A child's needs shall be assessed[ment] [of their needs is made, that they and the adoptive family are prepared for the placement,] and a written plan [is]shall be developed to ensure that the adoptive parents are prepared to meet the child's needs and[needed] necessary services are provided[after placement].

[I]K. [Temporary Care Before Placement for Adoption:] A child [that has been freed for adoption and is] awaiting placement with an adoptive family shall be placed in a licensed foster or residential home or facility.[foster home where his or her needs can

~~be met and which can assist in preparing the child for placement in a prospective adoptive home Children]~~

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

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

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

~~[J]L. [Responsibility for a Different Permanency Plan: Children that have been accepted for adoptive placement will have a permanency treatment plan developed with a goal of] A child placing adoption agency shall have an individualized written adoptive placement plan for each child, [and finalization, and objectives that focus on assisting] which shall include:~~

~~1. providing the family and child services or service referrals after the adoption is finalized; [during the transition phase to ensure that ongoing services required are obtained.] and~~

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

~~[K]M. [Supervisory Visits: After a child has been placed in the adoptive home, a] A social worker shall supervise the child's placement until finalization of the adoption to assist with the transition and assist the family in obtaining any needed services.~~

~~1. A[+] minimum[,] of three supervisory visits shall be made [so the agency can have sufficient information to make a recommendation regarding] prior to finalization of the adoption.~~

~~[L]N. [Listing with the Adoption Exchanges: Agencies] A child placing adoption agency having a child available for adoption who has not been placed within [60]30 days [of being freed] after relinquishment or after being determined to be available for adoption by the court shall document [all] its efforts to screen the child with other [C]child [P]placing [A]agencies and shall list the child with local, regional, and inter-state [A]adoption [E]exchanges[to help find an appropriate placement].~~

~~[M]O. [Preparation of the Child for Placement: Sufficient time and planning must be provided according to] [t]The needs of the child shall determine the amount of time taken to prepare the child for placement. The child [should]shall be [helped to accept] counseled regarding the adoptive placement and [should]shall be protected [insofar as possible] from emotional disturbances associated with sudden separation from a known situation.~~

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

~~1. The child who is old enough to comprehend and take some responsibility should have a part in the decision that adoption is the best plan. The child must know that his or her own parents cannot continue to provide care and must accept separation from them in order to become a part of another family.~~

~~2. Before meeting with the adoptive parents, the child should know that placement is under consideration. Should the adoptive family decide not to proceed with placement, the worker will help~~

~~the child to understand the situation in a manner that will minimize any damage to the child.~~

~~3. The child should have the opportunity to become acquainted with the new parents gradually. A series of short visits to the adoptive home before placement can be particularly helpful. Such visits should not take place until after adoptive parents have expressed interest in adopting the child.~~

~~4. The number and place of visits with adoptive parents, and the time of placement should be determined by the age and the particular needs of the child and the family.~~

~~N. Retention of Records: In an effort to prepare for possible requests for information pertinent to a significant medical or hereditary concern on the part of the adoptive family or adult adoptee, the agency shall maintain in the file, medical, historical and developmental information and records about the child and the birth parents, received prior to finalization.]~~

R501-7-[8]10. Services to Adoptive Parents.

~~A. [Services for Adoptive Parents:] Child placing adoption agencies shall provide prospective adoptive parents with a written description of their services, policies and procedures.~~

~~[4]B. [Discussion of] A child placing adoption agency shall explain the adoption process and the birth parent['s] rights, including the status[legal rights] of the putative father to the prospective adoptive parents.~~

~~C. A child placing adoption agency shall provide all available[Provisions shall be made for accessibility to] non-identifying information on children who may be available for adoptive placement and their [child's]birth famil[y]ies, including but not limited to physical descriptions, special abilities, developmental and behavioral history, personality and temperament, medical and genetic history, ethnic and cultural background, and prior placement history.~~

~~D. A child placing adoption agency shall inform prospective adoptive parents of the availability of non-identifying health, genetic and social histories in accordance with Section 78-30-17, and[Information shall be made available about] Utah's Mutual Consent Voluntary Adoption Registry, [through the Utah Bureau of Vital Records]Section 78-30-18.~~

~~[2]E. A child placing adoption agency shall provide [4]individual [and]or group [social work] counseling [shall be provided] to help the prospective adoptive parents evaluate and develop their capacities to meet the ongoing needs of the child, [then added to the family]. This support should continue into the post-placement period when it is necessary and deemed appropriate. If an agency cannot provide this preparation and support, they are responsible for offering another support for the family.]~~

~~[3]F. A child placing adoption agency shall review all available information about the birth parents and child with the prospective adoptive parents and encourage[Assistance in] the selection of a child whose needs the adoptive parents will be able to meet.~~

~~[4]G. A child placing adoption agency shall prepare[Preparation of both] the child and adoptive family for the placement of the child in the home[.].~~

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

children in the State's custody, [including discussion and approval of a subsidy when appropriate.] The agency shall inform each prospective adoptive parent that assistance may be available when adopting children in the custody of the state, including:

1. Medicaid coverage for medical, dental, and mental health services;
2. tax benefits, adoption subsidies, or other financial assistance to defray the costs of adoption; and
3. training and ongoing support for the adoptive parents.

[5. If an agency places a child for adoption, that agency is responsible for the supervision of the placement and continued support to the child and family. The agency shall assist with finalization.]

B. Basis for Selection of Adoptive Parents: [J] A child placing adoption agency shall inform adoptive parents when a child may be eligible for an adoption subsidy or benefit, including but not limited to SSI, and shall coordinate with the applicable state agency to apply for the subsidy or benefit.

[+]J. A child placing adoption agency shall [The agency must] have [a] written [process] procedures and standards for the evaluation and approval or denial of applications from prospective adoptive [homes] parents.

K. The [pre-adoptive evaluation] home study shall include:

1. [a series of] interviews with the adoptive applicants, their [in the office and at home. If the family has] children, [or] and other individuals living in the home; [they shall be part of the pre and post adoption evaluation and application process.];

2. criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Section 78-30-3.5

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

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

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

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

[2]M. [The]A child placing adoption agency shall select applicants who:

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

[b. provide non-identifying or open linkages to the child's birth family if and when appropriate.]

[e]2. [be]are informed [and sensitive] with regard to a child's ethnic, religious, cultural, and racial heritage[;]; and

[d]3. [demonstrate an ability to] understand the needs of a child at various developmental [states] stages.

[3. Agencies shall assess each applicant from the perspective of what would be in the best interest of a child.

4. No single factor should be decisive in and of itself.

C. Criteria of Capacity for Adoptive Parenthood, Contents of Home Study Evaluation or Pre Adoptive Evaluation Eligibility:

1. Assessment of adoptive applicants should be designed to provide the best indication of an applicant's capacity for adoptive parenthood: total personality functioning, emotional maturity, quality of spousal relationship, when applicable, capacity to parent children, attitude toward childlessness and readiness to adopt, and reasons for adoption.

2. The agency must have written standards for approval of adoptive families. These standards must include the following items plus other aspects of lifestyle and behavior which reflect the ability to protect, nurture, and care for the child. Agencies shall provide adoptive applicants with a realistic description of their services and procedures.

a. Residence: Adoptive applicants shall reside either within the area that the agency can serve directly, or in an area where the agency can procure services through another agency with acceptable standards.

b. Age: Chronological age alone should not be the determining factor for the selection of adoptive applicants. Utah statutes require that the adoptive parents be at least ten years older than the child placed for adoption. Physical condition and life expectancy of the applicants should be taken into consideration to protect the child against a repeated, foreseeable loss of parents through death or incapacitating illness. Also, it is important for applicants to be physically and emotionally capable of meeting the needs of the children as they grow and develop.]

N. [e. Marital Status: When] A child placing adoption agency shall not reject an applicant solely based upon the applicant's marital status. Married applicants [are married, husband and wife] shall maintain a residence together and the relationship shall be stable, [be of sufficient duration to give evidence of its stability. Single parents shall be considered in accordance with their ability to meet the needs of available children.

d. Health of Applicant: A medical history and recent physical examination shall be required as evidence that the applicants have reasonable health and life expectancy, and that the applicants have the physical and emotional ability to fulfill the responsibilities of parenthood.]

[e]O. [Family Income: Adoptive]A child placing adoption agency shall verify that an applicant's income [shall be] is sufficient [in order] to provide [financial stability and security] for a child's needs. [Income alone shall not be the determining factor for the selection of adoptive applicants.

f. Housing: Housing and neighborhood shall provide space and living conditions necessary for health, safety, emotional well-being, and self-respect of the family and the adoptive child. Strict space requirements should not be a deterrent to placement if relationships in the family are satisfactory.

g. Religion: Lack of religious affiliation or of a religious faith should not be a bar to consideration of any applicant to meet the specific needs of a child.

h. Applicant Abilities: Consideration shall be given to the ability of the applicant to meet the specific needs of the individual child.]

[i]P. [Working Parents:]A child placing adoption agency shall not reject an applicant solely based upon the applicant's choice to [Applicants who] work outside the home, [shall not be excluded

from consideration as adoptive parents. Consideration] Applicants who work outside the home shall [be given to] provide a written plan [to] describing how they shall provide security and responsible child care [adequate] to meet the individual child's needs.

[j. Provisions of R501-14 and R501-18 shall be met.

D. Use of Committee in Placement: The final decision to approve a family for the placement of a child should be the responsibility of the professional staff. The decision shall be made by more than one person. The applicants shall be informed in writing of the decision of the committee. If the agency disapproves the applicants for placement, the applicants are entitled to be informed of this in person and to be given the reasons for the agency decision. They are also entitled to the opportunity to appeal the decision and should be informed of this process in writing. The agency shall maintain a written record of any appeals.]Q. A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parents have given written consent, indicating that they are fully informed of the risks involved.

R. A child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

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

1. providing or making referrals to service such as counseling, crisis intervention, respite care, and support groups;
2. monitoring the child's adjustment and development;
3. assisting the family in helping the child, friends, family members, extended family members, neighbors, schools, and others understand the adoption process; and
4. assisting the family in understanding their feelings, understanding the child, and adjusting to the family composition.

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

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

2. A minimum of three fact-to-face supervisory visits shall take place before finalization, with at least two visits in the home.

U. A child placing adoption agency shall provide assistance in finalizing the adoption, unless the agency removes the child due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parents; the separation or divorce of the adoptive parents; the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

[R501-7-9. Services During and After Adoption Placement.

A. Selection of Adoptive Family for Specific Child:

1. The selection of the adoptive family for a specific child shall be made through the use of a multi-disciplinary committee as needed and the final decision shall be based on the family's and the child's suitability for each other. Suitability is determined by the family's ability to meet the individual needs of the child and the capacity of the child to benefit from the family.

2. Consideration for the wishes of the birth parents, the adoptive parents, and the adoptee, when applicable, shall be a part of the selection process.

3. The decision of the committee shall be in writing, signed by all members of the committee, and filed in the case record.

B. Information to Adoptive Parents:

1. Agency adoption fees shall be discussed with the adoptive family prior to starting the application process. A flat fee may be charged for processing application materials, which is not refundable, regardless of whether the family is accepted or not, and an itemized account of the charges shall be made available to the family. Placement fees shall also be discussed with the family prior to applying along with payment schedules, and these fees shall reflect a reasonable cost based on the expenses incurred by the agency.

2. Adoptive parents shall be provided information about the children they adopt and their birth parents, when available, that will help them to:

- a. Understand their child, including talents, special needs or problems;
- b. Decide whether or not they can accept the child;
- c. Feel comfortable about the birth parents and the reasons for placement;
- d. Understand their child's heredity, maturation process, and developmental issues related to adoption;
- e. Talk to their child about their biological origins;

3. Adoptive parents shall be given full disclosure of information about the birth parents and child with the exception of information deemed by law to be identifying. The information to be shared shall include the following:

- a. developmental and behavioral history;
- b. level of current development;
- c. personality and temperament traits;
- d. medical information;
- e. ethnic background;
- f. cultural hereditary conditions;
- g. prior placement history;
- h. information about the birth parents that would be helpful for the child to know while growing up, such as physical descriptions, special abilities, and personality traits.

i. Agency staff shall be prepared to review with the adoptive family the above information and to help them relate it to present day and placement consideration for their family.

5. When a Child Placing Agency has a child who requires an adoption subsidy, the agency shall coordinate with the state agency to establish the subsidy. Subsidies shall be paid by the state agency based on state policy. The Child Placing Agency shall discuss the subsidy with the family.

C. Pre and Post Placement Services: The Child Placing Agency shall provide continuing support and help to the child and his or her adoptive family as needed during the time after placement both before and following the legal adoption. These services shall be recorded and include:

1. The agency shall inform the adoptive family, prior to placement, of the available services, so that the family shall view the services as a source of help and security.

2. The agency has a protective function when the child's custody remains with the agency during the placement prior to finalization, and is responsible for determining that the child's adjustment and development is satisfactory and that the family is able to cope with any difficulties. This may be accomplished

through direct services and, when necessary, referring to specialized services.

— 3. The agency shall provide assistance to the family in helping their child, friends, family members, extended family members, neighbors, schools, etc., understand the adoption process. This shall be accomplished through individual interviews, family counseling services, selected literature, and consultation.

— 4. The agency shall provide services to the adoptive family that will assist them in understanding their own feelings, the adjustments of adding a child to their family, understanding the complicated feelings of the child, the specialized services that their child may need in the home and out of the home. This shall be accomplished through individual sessions and family support groups.

— 5. The frequency of home visits, office contacts, telephone calls, and other contacts shall depend on whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems. Early placement visits shall convey the agency's support and readiness to help. A contact soon after placement is essential in building the relationship and shall take place within two weeks of placement. A minimum of three supervisory visits shall take place before finalization, with at least two visits in the home.

— 6. The length of time between placement and finalization shall be determined by Utah State Law. Finalization shall not take place until the family and the agency have determined that they are ready. The post placement period, however, shall not go on indefinitely. In each case, a plan shall be made for the time likely to be needed, with an outer limit set.

— 7. The agency shall consider removal of children before legal adoption only if circumstances impair their security in the family or jeopardize their physical and emotional development. These circumstances might include incompatibility, mental illness, seriously incapacitating illness, or the death of one of the adoptive parents, separation of adoptive parents, abuse, neglect, or rejection of the child, lack of attachment to the child, an unanticipated physical or mental problem of the child, or request by the adopting parents for the removal of the child.

— 8. The agency shall offer supportive services to maintain the family and document this support. Services may include the following:

- a. respite care for the child;
- b. counseling services; and
- c. family and adoption committee review of placement and planning.

— D. Post Adoption Services: Adoption services shall be made available to birth and adoptive parents and adopted persons after the legal adoption. These services shall respond to matters related to the adoption, and will include the following:

— 1. Information, counseling services within the agency or referral to proper resources for counseling, crisis intervention, respite care, and specialized support groups.

— 2. Adoptees shall be offered post legal adoption services that assist them in exploring their attitudes toward themselves as adopted persons.

— 3. Within the relevant statutes, child welfare agencies shall assist adopted persons who have reached the age of majority in their search for information about, or their wish to establish contact with birth parents, siblings, or other members of their birth family, provided that these persons are willing.

R501-7-10. Adoption and the Community.

— A. Adoptions in Relation to Community Child Welfare Programs: Private and public agencies shall:

- 1. List waiting children with local and regional exchanges.
- 2. Be active in interpreting child welfare programs and adoption services to assure widest utilization by persons needing the services, and to ensure realistic understanding of services by the public.
- 3. Participate in any joint inter-agency planning and coordination to maximize programs so that birth parents and adoptive applicants will have freedom of choice and equal opportunity to apply for services, regardless of racial, ethnic, religious group, or ability to pay a fee.

— B. Promotion of Adoption Services:

— 1. Adoption agencies shall inform each potential adoptive parent that children in the custody of the state are available for adoption, and that parents may request the following:

- a. Medicaid coverage for medical, dental, and mental health services;
- b. Tax benefits or financial assistance to defray the costs of adopting these children;
- c. Training and ongoing support for the adoptive parents of these children; and
- d. Information about individual children, which may be obtained by contacting the Division offices or its internet site.

— 2. Adoption agencies shall provide the following information to adopting parents:

- a. Notice about children in state's custody;
- b. A copy of a pamphlet prepared by the Division of Child and Family Services that explains about adoption of children in the State's custody;
- c. Adoption agencies shall establish a method to determine unmet placement needs and a plan to recruit adoptive families when needs are identified.

— 4. Recruitment efforts shall involve adoptive parents and shall include persons of similar ethnic or racial groups whenever children need to be placed with families of similar ethnic origin. Recruitment efforts shall seek to enlist the involvement of ethnic and cultural minority groups, religious, and other civic groups as needed.

— C. Legal Protection Required for Adoption Services: Adoption agency mission statements, policies, and procedures shall assure that the following legal protections are met:

- 1. The best interests of the child are paramount.
- 2. Parental rights and responsibilities are safeguarded.
- 3. Children are not deprived unnecessarily of either birth parents or a permanent family.
- 4. Legal responsibility for the child will be clearly established at all times.
- 5. Children will not be placed in unsuitable families or families detrimental to the child's growth and development.

— D. Transfer of Parental Rights:

— 1. Adoption agency policies and procedures shall assure an orderly adoption process for the following:

- a. The legal separation of the child from birth parents.
- b. Transfer of custody and guardianship of the child.
- c. Consent to a specific adoption.
- d. Final transfer of parental rights and duties to the adoptive parents.

— 2. Agencies shall follow Utah State Statutes regarding the relinquishment of children, termination of parental rights, placement, and finalization procedures.

- 3. Legal risk adoptions shall be made only when:
 - a. The child's best interests are served;
 - b. Adoption is clearly the goal;
 - c. Termination is likely and able to be obtained in a reasonable time period;
 - d. Adoptive parents have given written consent, indicating that they are fully informed of the risks involved.]

R501-7-11. Inter[state or Out of C]country Adoptions.

[A. For interstate placements, adoption agencies shall comply with requirements of the Interstate Compact for Placement of Children.]

B. Prior to an adoption or placement with a family out of the state, the agency shall complete a plan with the other agency which defines financial and social services responsibilities.

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

1. [T]he child is legally freed for adoption in the country of origin[-];

[2. Information was provided about the physical or mental health of the orphan or abandoned child.]

3]2. [Referral] information was [given]provided to the adopting parents about naturalization proceedings[-];

4. The country of origin was provided all follow up information as that country requires prior to final adoption.

5. Agencies which place children in inter-country adoptions shall ensure that the following legal processes occur properly:

- a. consent to adoption and transfer of parental rights;
- b. legal responsibility for the child in the new country;
- c. validity of the adoption in the country of origin, if they are adopted in that country; and
- d. application to adopt or re-adopt the child or children in the United States, as applicable.

D. The same standards shall apply to home studies for out-of-country children as for all adoption services.

E. International Adoption Agencies shall do the following:]B. A child placing adoption agency that provides intercountry adoption services shall:

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

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

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

- a. a fixed contribution amount identified in advance and in writing to the prospective adoptive parents;
- b. the intended use of the payment; and

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

[+4. [P]provide all applicants with written policies governing refunds, [when adoption services that have been promised are not rendered or when there is a disruption of services that may nullify an adoption.]

[2]C. A child placing adoption agency that provides intercountry adoption services shall [N]notify adoptive applicants within [five working]ten business days when[ever it receives] information is received that a foreign country is suspending its adoption program.

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

4. Disclose data to adoptive applicants on their rates of successful adoptions and requests.]

**KEY: licensing, human services, child placing
[January 16, 2004]2004**

Notice of Continuation November 25, 2002
62A-2-101 et seq.

Workforce Services, Employment Development

R986-100-134

Payments of Assistance Pending the Hearing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26932

FILED: 02/02/2004, 14:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment makes clients eligible for continuing benefits pending a decision on good cause for not cooperating in the establishment of paternity.

SUMMARY OF THE RULE OR CHANGE: The Department recently changed the process for determining good cause for not cooperating in the establishment of paternity. Some of the reasons for good cause can only be established at the Administrative Law Judge level. A client should be eligible to receive child care until that decision is made. If good cause is not found, the client will be liable for the overpayment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 35A-3-101 et seq., 35A-3-301 et seq., and 35A-3-401 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the state budget as decisions regarding good cause were previously made at the Department level. If there is an

overpayment, the client will be liable to pay back the Department. Child care is a federally-funded program.

❖ LOCAL GOVERNMENTS: There will be no costs or savings to local government as this is a federally-funded program administered at the state level.

❖ OTHER PERSONS: There will be no costs of savings to any person as this is a federally-funded program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule change. This program is funded by federal grant monies. There are no fees charged to any person. The Department changed the decision making process from the employment counselor to the Administrative Law Judge. Because it will now take longer for the decision to be made, the Department wants to insure clients do not lose their employment pending a decision. If there is an overpayment, the client will be responsible for repayment making the change fiscally neutral.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on any business as this is a federally-funded program.

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 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.

R986-100. Employment Support Programs.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client is otherwise eligible, Employment Support Child Care (ES CC) can be paid pending an appeal of a decision from ORS that the client is not cooperating in the establishment of paternity or if the Department denies good cause. The client's request for a hearing must be received no later than 10 days after the date of the notice of denial or termination. The ES CC assistance will continue until a decision is issued by an ALJ regardless of when the certification period expires. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason. If a client files a new application after a decision by an ALJ denying assistance, the new application will be denied and the client will have no right to appeal that denial unless there has been a change in circumstances.

(3) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(4) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(5) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(6) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(7) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(8) Financial assistance payments under GA or WTE, and CC subsidies, except as provided in paragraph (2) above will not continue during the hearing process regardless of when the appeal is filed.

(9) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(10) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

(11) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

(12) Assistance is not allowed pending a hearing from a denial of an application for assistance.

KEY: employment support procedures

[2003]2004

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.: 26934

FILED: 02/02/2004, 15:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment more clearly defines "home" and requires clients repay child care to the Department from the proceeds of property.

SUMMARY OF THE RULE OR CHANGE: The current rule does not define home as a residence. The current rule requires that a client sell nonexempt real property and repay the Department for financial assistance. This amendment provides that the client will be required to repay the Department for child care also.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-301 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This proposed amendment affects the family employment program and child care which are both federally-funded programs. There will be no costs or savings to the state budget.

❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to state budget cost or savings, both programs are state run and these proposed changes will have no affect on local government.

❖ OTHER PERSONS: There are no costs or savings to other persons as a result of this rule change. The issue of the sale of real estate in the child care context has not come up. If it does, the client will only have to pay back the amount actually received.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule change. There are no compliance costs or fees charged for child care as it is funded entirely by federal dollars. A client is currently required to sell property to meet eligibility standards for child care but the current rule did not require the client to repay the Department from the net proceeds if any. The repayment is not a compliance cost but an agreement to repay the overpayment on the sell of property.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT

140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.**

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) Water rights attached to the home property are exempt;

(4) a maximum of \$8,000 equity value of one vehicle. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of \$8,000;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) For refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) Any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) 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 of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

KEY: family employment program

~~[2003]~~2004

35A-3-301 et seq.

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment aligns child care rules more closely to food stamp regulations and reflect current Department practice.

SUMMARY OF THE RULE OR CHANGE: The child care rules did not reflect that some of the provisions in Rule R986-200 to which the child care rules referred, do not apply to child care. The Department is bringing child care rules, where appropriate, into line with food stamp regulations for ease of administration. The changes do provide that if a child care provider is responsible for an overpayment, the provider will be liable, not the client. (DAR NOTE: The proposed amendment to Rule R986-200 is under DAR No. 26934 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-310

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There will be no costs of savings to the state budget as child care is a federally-funded program. This current amendments reflect current Department practice and bring the rules into line with food stamp regulations.
- ❖ **LOCAL GOVERNMENTS:** This is a state-run, federally-funded program and there will be no costs or savings to local government.
- ❖ **OTHER PERSONS:** There will be no costs of savings to any person. This is a federally-funded program. The changes reflect current Department practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule change. Child care is funded entirely with federal dollars. No fees or compliance costs are charged to any person. There will be no shift in eligibility standards as the Department currently applies these standards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on any business as a result of these rule changes.

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 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

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.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(4) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a 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

(5) 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.

(6) If an exception is granted under paragraph (4) or (5) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(7) 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 ~~substantiated~~ 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 by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(8) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by 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 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.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution 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) 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) 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.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income and assets must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household as defined by policy. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the [child cannot be eligible]entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income and assets of the specified relatives in the household must be counted. The income and assets of some household members in multi-generational households is counted in full instead of being deemed as in FEP or FEPTP;

(b) what is counted as income and assets except:

(i) one automobile is exempt for each household member participating in work and/or training if it is needed for employment, used for transportation to and from that work and/or training or if the client is living in the automobile;

(ii) the asset limit for ES CC is \$8,000 after allowable deductions;

(iii) the earned income of an minor child who is not a parent is not counted;[and]

(iv) child support, including in kind child support payments are counted as unearned income if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted [even if the value is more than the court or ORS ordered child support];

(v) the value of the lot on which the exempt home, referenced in R996-200-231, stands is exempt even if it exceeds the average size of residential lots for the community in which it is located;

(vi) all irrevocable burial plans are exempt. A revocable burial plan is exempt up to \$1500 per household member; and

(vii) real and personal income producing property, including rental property, is exempt as an asset if the property produces a reasonable return for its fair market value.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income; and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the

Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

KEY: child care

[2003]2004

35A-3-310

Workforce Services, Workforce Information and Payment Services

R994-102

Purpose of Employment Security Act

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26921

FILED: 01/28/2004, 14:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The unemployment rules are being rewritten to ensure that they comply with current law and practice.

SUMMARY OF THE RULE OR CHANGE: In order to keep all procedural rules together, some provisions of this rule have been moved to Rule R994-508. Rule R994-508 is a proposed rule that is being repealed and reenacted and that is being filed with this amendment. Language from the rule which is currently contained in statute is being removed as not being appropriate for rule. (DAR NOTE: The proposed repeal and reenact of Rule R994-508 is under DAR No. 26929 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally-funded program and there are no substantive changes being made to this rule. These changes reflect current Department practices.

❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.

❖ OTHER PERSONS: There will be no costs or savings to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to current law or rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs to any person for the reasons stated in

relation to the State budget. This amendment does not make any substantive changes to current law or rule.

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.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION AND
PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-102. [Purpose of] Employment Security Act, Public Policy and Authority.

R994-102-101. [Preamble.] Authority and Statement of the Rules.

(1) One of the purposes of the Employment Security Act, Utah Code Section 35A-4-101 et seq., the Act, is to lighten the burdens of persons unemployed through no fault of their own by maintaining their purchasing power in the economy. The legislature, in establishing this program, recognized the substantial social ills associated with unemployment and sought to ameliorate these problems with a program to pay workers for a limited time while they seek other employment. [It is because of these reasons that it is in the public interest to liberally construe and administer the Act. It is important that both the worker seeking benefits and the employer who will ultimately pay for the worker's benefits understand the process by which contributions are assessed and benefits are paid. The following rules are written to explain and clarify the application of the Act. In applying these rules to individual cases the Department will consider the reasonableness of claimant's action, the totality of the employment situation, and whether the claimant has a genuine continuing attachment to the labor market.]

(2) The Department of Workforce Services (Department) [has an obligation to be unbiased in administration of the Act. Therefore, the Department must allow all parties due process before dispensing the revenues provided by the Employment Security Act in order to protect] is responsible for protecting the investment of employers who contributed to the unemployment insurance fund, the interests of the unemployed workers who may be eligible for the dollars provided by

the fund, and the community which benefits from a stable workforce through the maintenance of purchasing power. [Due process requires that employers will not be charged contributions for benefits, and workers will not be denied benefits, without the opportunity to provide information and contest or refute the information considered in the decision making process.]

(3) [When an eligible worker has no work available and there exists no dispute among the worker, the employer, or the Department benefits must be paid promptly. However, when a worker quits, is fired, or has any other issue under the law an investigation of the circumstances must take place to determine if benefits can be paid. In determining whether or not the worker is eligible for benefits, his actions are measured against the standards of just cause following a discharge in accordance with Section R994-405-202, and good cause in accordance with Section R994-405-102 and equity and good conscience in accordance with Section R994-405-103 following a voluntary separation from employment. When one party fails to provide information or when that information is less credible, the result is that the party who has the responsibility to provide information may not prevail in its position.] The legal authority for these rules and for the Department to carry out its responsibilities is found in Utah Code Sections 34A-1-104 and 35A-4-101 et seq.

(4) These rules are to be liberally construed and administered and doubts should be resolved in favor of finding coverage of the employee and assisting those who are attached to the work force.]

R994-102-102. Evidentiary Requirements.

(1) The evidentiary requirement for Department decisions is a preponderance of the evidence. It is not necessary to meet criminal court standards of beyond reasonable doubt or overwhelming evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Although the evidence that is required for an appeal decision must be of probative value, an initial determination must be made based on the best or most logical information available. Sworn testimony or first hand statements have greater believability than unsworn statements or hearsay. A great deal of information is provided to the Department through telephone conversations and written reports. While the information provided in this manner will always be considered by the Department, it cannot be relied upon more than credible sworn testimony when the parties have been given an opportunity to present evidence in person.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross examination, has inherent infirmities which make it unreliable. The failure of one party to provide information either initially or at the appeals hearing severely limits the amount and quality of information upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the decision making process by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the social integrity of the unemployment insurance system.]

KEY: unemployment compensation

[1987]2004

Notice of Continuation May 23, 2002

35A-4-102

Workforce Services, Workforce Information and Payment Services

R994-103

Approval of Counsel Fees

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26922

FILED: 01/28/2004, 15:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The unemployment rules are being rewritten to ensure that they comply with current law and practice.

SUMMARY OF THE RULE OR CHANGE: In order to keep all procedural rules together, the provisions of this rule have been moved to Rule R994-508. Rule R994-508 is a proposed rule that is being repealed and reenacted and that is being filed with this amendment. This rule is repealed in its entirety. (DAR NOTE: The proposed repeal and reenact of Rule R994-508 is under DAR No. 26929 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-4-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally-funded program and there are no substantive changes being made by these changes. These changes reflect current Department practices.

❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.

❖ OTHER PERSONS: There will be no costs to any person for the reasons stated in relation to the State budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs to any person for the reasons stated in relation to the State budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on business.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-103. Approval of Counsel Fees.

R994-103-301. General Definition.

The intent of Subsection 35A-4-103(3) is to protect the interests of the claimant who is dependent on his benefits as a means of livelihood during his period of unemployment. The Act does not address fees charged to employers by their representatives as employers are deemed to be more knowledgeable in the marketplace and generally not in need of such safeguards.

R994-103-302. Procedure.

If a fee is to be charged a written petition for approval of fee must be submitted by the claimant's representative to the Administrative Law Judge before whom the representative appeared, or to the Chief Administrative Law Judge if no hearing was scheduled. An approval form can be obtained through the appeals office. The fee may be approved as requested or a lesser amount may be approved depending upon the appropriateness and justification of the request.

R994-103-303. Criteria for Evaluation of Fee Petition.

(1) The appropriateness of the fee will be determined based on the following criteria:

(a) Complexity of Issues Involved.

A case involving several complex issues would obviously require greater preparation. However, services performed which add nothing to the presentation of the case are to be avoided. For example: A simple case having only one legal issue such as a voluntary quit would not normally require more than two hours of preparation time.

(b) Time actually spent in:

(i) preparation of the case;

(ii) attending the hearing;

(iii) preparation of a brief, if required (A brief should be submitted only when requested or approved by the Administrative Law Judge. If a brief is submitted which is not requested or necessary, the approved fee may be reduced by the charges for time spent on the brief);

(iv) further appeal to the Workforce Appeals Board or the Supreme Court.

(c) Quality of service rendered including:

(i) preparedness of the representative;

(ii) organization and presentation of the case;

(iii) avoidance of undue delays. Documents and witnesses should be made available at the time scheduled for the hearing and postponements should not be required except in unusual circumstances. Every effort should be made to go forward with the hearing when it is

~~originally scheduled especially in benefit cases as claimants are frequently entirely without income during the course of the appeal processes if benefits have been denied or if benefits have been allowed, excessive overpayments may be created. In recognition of the due process right for payment when due, the Department of Labor has established a federal standard requiring that 60% of all appeals decisions be issued within 30 days of the date the appeal is filed. Therefore, unnecessary delays justify a reduction in the approved fee to the representative.~~

~~(iv) Necessity of Representation.~~

~~If it is clearly demonstrated that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative only a minimal fee may be approved.~~

~~(d) Prevailing Fee.~~

~~The prevailing fee is the rate charged by others for the same type of service. In determining the prevailing fee for the service rendered, credence will be given to information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as determinations previously rendered by the Appeals Tribunal.~~

~~(e) Limitation on Amount of the Fee.~~

~~Fees will not be approved in excess of 25% of the claimant's maximum unemployment benefit entitlement unless such a limitation would preclude the claimant from pursuing an appeal to the Supreme Court or would preclude in some other way an opportunity for due process.~~

R994 103 304. Appeal Rights.

~~Should the representative disagree with the ruling of the Administrative Law Judge, a written appeal may be made to the Workforce Appeals Board within 30 days from the date of issuance of the decision. This appeal must set forth the grounds upon which the complaint is made.~~

KEY: unemployment compensation, counselors

1987

Notice of Continuation May 23, 2002

35A-4-103(3)]

▼ ————— ▼
Workforce Services, Workforce Information and Payment Services

R994-104
Prosecution

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26923

FILED: 01/28/2004, 15:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The unemployment rules are being rewritten to ensure that they comply with current law and practice.

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed as inappropriate subject matter for rules and the Department

no longer follows these procedures. This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-104

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be no costs or savings to the State budget because this is a federally-funded program and there are no substantive changes being made to this rule. The Department still makes referrals for criminal prosecution but follows a different procedure, working more closely with the prosecutorial authorities to determine which cases to prosecute. How those decisions are made should be in Department procedures and not in rule.

❖ **LOCAL GOVERNMENTS:** In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.

❖ **OTHER PERSONS:** There will be no compliance costs to any person for the reasons stated in relation to the State budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repeal of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses. Fraud will still be prosecuted but the decision making process relies on more input from the prosecutorial agencies.

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

**WORKFORCE SERVICES
 WORKFORCE INFORMATION
 AND PAYMENT SERVICES
 140 E 300 S
 SALT LAKE CITY UT 84111-2333, or
 at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

[R994-104. Prosecution.]

R994-104-101. General Definition.

~~The intent of Section 35A-4-104 is to assess penalties beyond those administered by the Department as provided by Subsection 35A-~~

~~4 405(5). As it would be impractical and beyond the intent of the law to prosecute all cases of fraud in the courts, it is left to the Department to determine which cases will be presented to the courts for additional civil penalties. A board for reviewing prosecution will be established within the Department. The board must approve all recommendations for the prosecution of fraudulent claims.~~

R994-104-102. Guidelines for Referring Cases of Fraud to the Courts.

(1) ~~Acts of fraud which may be considered for prosecution include those committed by Utah residents against the Utah unemployment insurance program or Utah residents who have committed fraud against another state or federal unemployment compensation program and non claimants who fraudulently attempted to obtain benefits or payments from an unemployment compensation program. Prosecution is appropriate if the individual has made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact to obtain or increase any payment under any state or federal unemployment compensation program, or has been found in violation of Subsection 35A-4-405(5). The Prosecution Board will determine what cases or categories of cases will be pursued for prosecution in cooperation with County Attorneys. Employers may also be prosecuted under Subsection 35A-4-104 or under Subsection 35A-4-405(5). The Prosecution Board will determine what cases or categories of cases will be pursued for prosecution in cooperation with County Attorneys. Employers may also be prosecuted under Subsection 35A-4-104 or under Subsection 35A-4-104(1) for collusion with others in an attempt to fraudulently obtain benefits. The following are examples of some types of cases which may be referred to local county attorneys for recommendation of prosecution:~~

- ~~(a) fraudulent claims involving numerous weeks of benefits where the loss or potential loss to the fund is substantial, or~~
- ~~(b) flagrant violations involving reckless abuse of the unemployment insurance program, or~~
- ~~(c) cases having strong evidence of intent to repeatedly abuse the program, or~~
- ~~(d) any cases which would contribute to public awareness, such as cases where the potential for education of the public outweighs the monetary concerns of the Department.~~

KEY: unemployment compensation, prosecution*

1987

Notice of Continuation May 23, 2002

35A-4-104(1)]



Workforce Services, Workforce Information and Payment Services

R994-201

Definition of Terms in Employment Security Act

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 26928

FILED: 02/02/2004, 12:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The unemployment rules are being rewritten to ensure they comply with current law and practice.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment adds definitions and acronyms used in other proposed amendments filed concurrently. (DAR NOTE: The other proposed amendments are R994-102, DAR No. 26921; R994-406, DAR No. 26924; and the proposed repeal and reenacts of Rules R994-508, DAR No. 26929; and Rule R994-404, DAR No. 26930 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-201

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally-funded program and there are no substantive changes being made to this rule. These changes reflect current Department practices.
- ❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.
- ❖ OTHER PERSONS: There will be no costs or savings to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to current law or rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to current law or rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as there are no substantive changes being made to the rules.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-201. Definition of Terms in Employment Security Act.

R994-201-101. General Definitions and Acronyms.

These definitions are in addition to those defined in Section 35A-4-201.

(1) [Act]

"Act" means the Utah Employment Security Act, and amendments thereto.

(2) "ALJ" means Administrative Law Judge.

(3) "Appeals Unit" means the Division of Adjudication.

(4) "Board" means the Workforce Appeals Board.

([2]5) Burden of Proof.

The person or party with the burden of proof has the initial responsibility to show that the fact at issue is worthy of belief. Burden of proof requires proof by a preponderance of the evidence.

([3]6) Bona Fide Employment.

"Bona fide employment" is work that was an authentic employer-employee relationship entered into in good faith without fraud or deceit rather than an arrangement or report of non-existent work calculated to overcome a disqualification.

([4]7) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

([5]8) Covered Employment.

"Covered employment" is [that work]employment subject to a state or federal unemployment insurance laws[program], including laws pertaining to railroad unemployment and active military duty, which can be used to establish monetary eligibility for unemployment insurance benefits. Active military duty in a full time branch of the US military service can be used, even if the duty was for less than 90 days, if the claimant was released under honorable conditions. National Guard or Reserve wages may be used only if the claimant has completed 90 consecutive days of active duty and if the claimant was released under honorable conditions.

([6]9) Department.

"Department" means the Department of Workforce Services.

([7]10) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

([8]11) Itinerant Service.

"Itinerant service" means a service maintained by the Department of Workforce Services at specified intervals and at designated outlying points within the jurisdiction of an Employment Center.

([9]12) Local Office.

"Local office" means the Employment Center of any geographical area.

([10]13) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association,

([11]14) Preponderance of Evidence.

A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, more convincing to the mind, evidence that best accords with reason or probability. Preponderance means more than

weight; it denotes a superiority of reliability. Opportunity for knowledge, information possessed and manner of testifying determines the weight of testimony.

([12]15) Separation.

"Separation" means curtailment of employment to the extent that the individual meets the definition of "unemployed" as stated in Subsection 35A-4-207(1) with respect to any week.

([13]16) Transitional Claim.

A claim that is filed effective the day after the prior claim ends provided an eligible weekly claim was filed for the last week of the prior claim.

KEY: unemployment compensation, definitions[‡]

[1987]2004

Notice of Continuation May 23, 2003

35A-4-201

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Workforce Services, Workforce Information and Payment Services

R994-404

Wage Freeze Following Workers' Compensation

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 26930

FILED: 02/02/2004, 13:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The unemployment rules are being rewritten to ensure that they comply with current law and practice.

SUMMARY OF THE RULE OR CHANGE: The current rule does not define how long a person must be off work due to a work-related injury or illness before the provisions take effect. The reenacted rule defines that period to be seven weeks. Other changes were made to bring the rule into compliance with current Department practice and law and stylistic and nonsubstantive changes were made.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-401

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally-funded program and there are no substantive changes being made to this rule. These changes reflect current Department practices.

❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.

❖ OTHER PERSONS: There will be no costs or savings to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to

current law or rule but rather defines current Department practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to current law or rule apart from defining current Department practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no fiscal impact on any business. There are no compliance costs and the change reflects current law and Department practice.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

[R994-404. Wage Freeze Following Workers' Compensation.]

R994-404-101. General Definition.

The purpose of this provision is to extend the protection of the unemployment insurance program to individuals who, because of the period of illness or injury that was the result of a work related incident insured by a Workers' Compensation and Occupational Disease Program, may not have qualifying wages in the calendar quarters designated by the statute as the base period. The term "freezing of base period wages" comes from the ability to use employment and earnings from an earlier base period.

R994-404-102. Qualifying Elements to Use Wages Outside Normal Base Period.

(1) To be eligible to use wages from calendar quarters that began prior to the normal base period, all of the following elements must exist:

- (a) the claimant must have been off work due to a job related illness or injury;
- (b) the claimant must have filed for and been determined eligible to receive compensation for the illness or injury under a

qualifying Workers' Compensation or Occupational Disease Program of the State of Utah or a Federal Program.

(c) the initial claim for unemployment insurance benefits must have been filed within 90 days after he was released:

(i) by his medical consultant to return to full time work (this does not include release to limited or light duty work), and

(ii) following a continuous period of sickness or injury; and

(d) the unemployment insurance claim must have been filed within 36 months of the week the covered injury or illness occurred.

(2) At the time the claimant is released from the doctor and reports to the Department to file an unemployment insurance claim, the claimant may elect to continue an existing claim or cancel the existing claim. If he cancels the existing claim, he may file a new claim using wages paid during the first four of the last five completed calendar quarters prior to the date of his illness or injury that caused the claimant to leave work and file for worker's compensation. If the claimant elects to continue the existing claim, it cannot later be canceled in favor of the wage freezing provisions even within the 90 days, nor will the wage freeze provisions apply to any subsequent claim. If a prior claim is canceled, no overpayment will be established even if payments have been made.

R994-404-103. 90 Day Filing Limitation.

(1) The 90 day time limitation for filing an unemployment insurance claim following an insured illness or injury means 90 calendar days after the claimant was released for full time work by his doctor, not the end of the period of coverage under workers' compensation. Regardless of the day the claimant contacts the Department to file a claim, the effective date of the eligible claim must be within the 90 days. For example, if the 90th day falls on Wednesday and the claimant files a claim on Thursday, the effective date of the claim would be Sunday of that calendar week and would fall within the 90 day time limitation.

(2) Good Cause for Filing Beyond 90 Days.

Good cause may be established for filing beyond the 90 day period if there is substantial confusion as to the date the individual was released to return to work or the claimant was prevented from filing due to circumstances beyond his control. Returning to work immediately subsequent to receiving a medical release may establish good cause for filing beyond the 90 day period if there is no substantial delay between the time the employment ended and the filing of the claim. A lack of knowledge about the wage freeze provisions due to the claimant's failure to inquire or the employer's failure to provide information does not establish good cause for failure to file within the 90 day period.

R994-404-104. The Effective Date of the Claim.

The effective date of the claim for benefits shall be the Sunday of the week in which the claimant makes application for benefits. Although the Act provides for the protection of the benefit year, it does not extend coverage to the weeks that were not filed timely, in accordance with provisions of Subsection 35A-4-403(1)(a).

R994-404-105. Base Period Wages.

The claimant has only two options. He can file a claim using wages paid during the first four of the last five completed calendar quarters prior to the week he files a valid claim, or he can use those wages paid during the first four of the last five completed calendar quarters prior to the date of his illness or injury that caused the claimant to leave his work and file for workers' compensation.

KEY: unemployment compensation, workers' compensation**October 29, 2004****Notice of Continuation May 23, 2002****35A-4-404|R994-404. Payments Following Workers' Compensation.****R994-404-101. Claimants Who Qualify for an Adjustment to the Base Period.**

(1) A claimant who does not have sufficient qualifying wages in the base period because he or she was off work due to a work related illness or injury may qualify for an adjusted base period if all of the following elements are satisfied:

(a) the claimant must have been off work for at least seven weeks during the normal base period due to a work related illness or injury. The weeks need not be consecutive;

(b) the claimant must have received temporary total disability (TTD) compensation for the illness or injury under the worker's compensation or occupational disease laws of this state or under federal law;

(c) the initial claim for unemployment insurance benefits must have been filed no later than 90 calendar days after the claimant was released by his or her health care provider to return to full-time work. This does not include release to limited or light duty work. The effective date of the eligible claim must be within the 90 days regardless of the date on which the claimant contacts the Department to file a claim. For example, if the 90th day falls on Wednesday and the claimant files a claim on Thursday, the effective date of the claim would be Sunday of that calendar week and would fall within the 90 day time limitation;

(d) the initial claim for unemployment insurance benefits must have been filed within 36 months of the week the covered injury or illness occurred.

(3) Wages previously used to establish a benefit year cannot be re-used.

R994-404-102. Good Cause for Late Filing.

(1) Good cause for not filing within the 90 day period can be established if:

(a) the claimant contested the release to work date by filing for a hearing with the appropriate administrative agency and there was no substantial delay between the date of the decision of the agency and the filing of the claim;

(b) the delay in filing was due to circumstances beyond the claimant's control;

(c) the claimant delayed filing due to circumstances which were compelling and reasonable; or

(d) the claimant returned to work immediately after receiving a release from his health care provider and there was no substantial delay between the time the employment ended and the filing of the claim.

(2) A lack of knowledge about the wage freeze provisions due to the claimant's failure to inquire or the employer's failure to provide information does not establish good cause for failure to file within the 90 day period.

R994-404-103. The Effective Date of the Claim.

The effective date of the claim for benefits shall be the Sunday of the week in which the claimant makes application for benefits. Although the Act provides for the use of an alternate benefit year, it does not extend coverage to the weeks that were not filed timely in accordance with provisions of Subsection 35A-4-403(1)(a).

R994-404-104. Adjustment of the Base Period.

The claimant can file a claim using wages paid during the first four of the last five completed calendar quarters immediately preceding the week the claim was filed (normal base period) or the first four of the last five completed calendar quarters prior to the date the claimant left work due to the illness or injury.

KEY: unemployment compensation, workers' compensation**2004****Notice of Continuation May 23, 2002****35A-4-404**

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Workforce Services, Workforce Information and Payment Services

R994-406

Appeal Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26924

FILED: 01/28/2004, 16:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The unemployment rules are being rewritten to ensure that they comply with current law and practice.

SUMMARY OF THE RULE OR CHANGE: In order to keep all procedural rules together, some provisions of this rule have been moved to Rule R994-508. Rule R994-508 is a proposed rule that is being repealed and reenacted and that is being filed with this amendment. (DAR NOTE: The proposed repeal and reenact of Rule R994-508 is under DAR No. 26929 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-406

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally-funded program and there are no substantive changes being made to this rule. These changes reflect current Department practices.

❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.

❖ OTHER PERSONS: There will be no costs to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to current law or rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs to any person. This amendment does not make any substantive changes to current law or rule but rather moves provisions to a different rule number (Rule R994-508).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as a result of these rule changes.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-406. [Appeal Procedures.] Fraud and Fault.

[R994-406-201. Continuing Jurisdiction—General Definition.]

Subsection 35A-4-406(2) specifies the conditions under which the Workforce Information and Payment Services Division, as the agent of the Department, has the authority to reconsider decisions made with regard to claims for benefits after they have become final. A decision is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions during the appeal period. Subsection 35A-4-406(2) establishes the guidelines for the Department's exercise of discretion in reviewing decisions.

R994-406-202. Limited Jurisdiction.

(1) The Department has no jurisdiction to review or reconsider final decisions with regard to benefits beyond one year from the date of the decision unless the claimant was at fault in creation of an overpayment. Jurisdiction may be taken for up to one year after the original determination was made provided there was either a change in conditions or a mistake as to facts. When a decision is made on an issue, the date shown by the Department Representative on the notice provided to the parties or the date the decision is recorded in the Department's records is the date of the decision. If a decision was not made, the date the Department was on notice of an issue but failed to act is the date of the decision.

(a) Change of Conditions.

A change of conditions may include a change in the law which would make a reconsideration necessary in fairness to the parties who were adversely affected by a law change. A change in conditions may also include personal circumstances of the claimant or employer which would have made it reasonable not to file an appeal, provided those circumstances have subsequently and unforeseeably changed.

(b) Mistake as to Facts.

— A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the Act or the Rules provided the decision is made under the correct section of the Act. A "mistake" is inadvertent rather than wrong information intentionally provided by the party subsequently alleging the mistake.

R994-406-203. Unlimited Jurisdiction.

— There is no time limitation on exercising jurisdiction if there was fraud or an overpayment as the result of fault by the claimant. There must be an overpayment which is charged to the claimant in accordance with provisions of Subsection 35A-4-406(4) before jurisdiction can be taken beyond one year after the original determination.

R994-406-204. Discretion.

Section 35A-4-406 does not require the Department to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts; the statute merely permits the Department to take jurisdiction. The claimant and employer may request a reconsideration of a decision, but they cannot compel the Department to exercise continuing jurisdiction. The Department will exercise continuing jurisdiction if it is necessary in fairness to an interested party who did not have access to material information or could not reasonably have filed an appeal provided there was a mistake as to facts or a change in conditions. However, jurisdiction may not be taken if the redetermination would have little or no effect. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. Jurisdiction will be taken in all cases where the Department is aware of a claimant fault overpayment which is large enough to be "set up" as provided by R994-406-404.]

R994-406-205. Obligation of Department Employees.

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect an individual's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

[R994-406-206. Notice.]

Any time a decision is reconsidered all interested parties will be notified of the new information and provided an opportunity to attend hearings held in conjunction with the review. All interested parties will receive notification of the redetermination and given the right to appeal.

R994-406-301. Provisions for Filing an Appeal—General Definition.

Subsection 35A-4-406(3) provides the opportunity for any parties affected by decisions made by the Department to file an appeal. The time limitations for filing appeals, which includes protests, requests for hearings, petitions and other requests or applications, and the exceptions to those time limitations are explained in Section R994-406-301 through R994-406-314. Subsection 35A-4-406(3) also provides provisions for withdrawing appeals, explains the opportunities which must be provided to parties to assure a fair hearing, identifies the commission as a party to the hearing, specifies the requirements of notification of the referee's decisions, and explains the further rights of appeal.

R994 406 302. Issuance of Determinations.

— A notice of determination is not considered to have been issued unless it is sent through the U. S. mail or served in person.

R994 406 303. Appeal Time Limitation for Decisions that are Not Mailed.

— If a decision issued by the Department is personally given to a party rather than sent through the mail, the amount of time permitted for an appeal is ten calendar days unless otherwise specified on the decision or by the Act.

R994 406 304. Appeal Time Limitation for Decisions Which are Mailed.

— If a decision issued by the Department is mailed, five days are added to the time prescribed by the Act for filing the appeal. Therefore, the amount of time permitted for filing an appeal from any decision that is mailed by the Department is fifteen calendar days unless otherwise specified on the decision or by the Act.

R994 406 305. Computation of Time Limitations.

— In computing the period of time allowed by the Act for filing appeals under Subsection 35A-4-406(3), the day the decision is mailed or handed to a party is not to be included. The last day of the appeal period that follows is to be included in the computation unless it is a Saturday, Sunday or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the offices of the Department are open.

R994 406 306. Date of Receipt.

— Any appeal which has been sent through the U. S. Mail, is considered filed and received by the Department on the date shown by the post office cancellation mark. When the post mark date cannot be established because it is illegible, erroneous or omitted, the appeal will be considered filed on the date it was mailed if the sender establishes that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the document will be considered filed on the date it is actually received by the Department as shown by the Department's date stamp on the document or other credible evidence such as a written notation of the date of receipt.

R994 406 307. Limitation of Jurisdiction.

— When it appears that an appeal may not have been filed within the time allowed by the Act or these Rules, the appellant will be notified and given an opportunity to show that the appeal was timely or was delayed for good cause. If it is found that the appeal was not filed within the applicable time limit and the delay was without good cause, the Administrative Law Judge will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and given or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994 406 308. Good Cause for Not Filing Within Time Limitations.

(1) A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

- (a) the appeal was filed within 10 days of actual receipt of the decision if such receipt was beyond the original appeal period and not the result of willful neglect; or
- (b) the delay in filing the appeal was due to circumstances beyond the control of the appellant; or
- (c) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994 406 309. Procedure for Filing an Appeal.

— An appeal must be filed in writing by mailing a signed letter to the mailing address of the Appeals Tribunal as shown on the notice of decision, or submitting a written statement at an employment center. The appeal must be signed by an interested party who has a right to notice of a determination unless it can be shown that the interested party has conveyed in writing the authority to another person to act in his behalf, or he is physically or mentally incapable of acting in his own behalf. The statement of appeal should give the date and issue of the decision being appealed, the social security number of any claimant involved, the employer number or case number of the decision, a statement of the intent of the appeal and the facts or reasons which support the request. However, the failure of an appellant to include such information will not preclude the acceptance of an appeal. The scope of review will not be limited to the issues or contentions stated in the appeal. If the Department has begun payment of benefits to a claimant, such payments will not be discontinued pending the outcome of an appeal even if the claimant is willing to waive his right to payment. However, if benefits are denied as a result of the appeal an overpayment may be established in accordance with provisions of either Subsection 35A-4-406(4) or 35A-4-406(5).

R994 406 310. Reasonable Opportunity for Fair Hearing.

- (1) Notice.
 - (a) All interested parties will be notified by mail at least seven days prior to the hearing of:
 - (i) the time and place, or conditions of the hearing;
 - (ii) the legal issues;
 - (iii) the consequences of not appearing; and
 - (iv) the procedures and limitations for requesting rescheduling.
 - (b) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived by the parties after a full verbal explanation of the issues and potential results.
 - (c) It is the responsibility of the parties to a hearing to notify any representatives or witnesses of the time and place of the hearing and to make necessary arrangements for their participation.
 - (d) If a party has designated a person or professional organization as his agent, notice of hearings will be sent to that agent and when such notice is sent, it will be considered that the party has been given notice.
 - (e) If an interpreter is needed by any parties or their witnesses, the party should arrange for an interpreter who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Appeals Office at the time the appeal is filed (or when notification is given that an appeal has been filed) that assistance is required in arranging for an interpreter.
- (2) Hearing of Appeal.
 - (a) All hearings will be conducted informally and in such manner as to protect the rights of the parties. All issues relevant to the appeal will be considered and passed upon. The decision of the Appeals Referee hereafter referred to as Administrative Law Judge, will be based solely on the testimony and evidence presented at the hearing.
 - (b) All testimony of witnesses will be given under oath. Any party to an appeal will be given an adequate opportunity to be heard

and present any pertinent evidence of probative value and to know and rebut by cross examination or otherwise any other evidence submitted. The Administrative Law Judge will direct the order of testimony and rule on the admissibility of evidence. Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence, may be accepted and will be given its proper weight. However, no finding of fact will be based solely on contested hearsay. Any official records of the Department, including reports submitted in connection with the administration of the Employment Security Act may be included in the record. The Administrative Law Judge may take such additional evidence as is deemed necessary.

(c) The parties to an appeal, with consent of the Administrative Law Judge, may stipulate to the facts involved. The Administrative Law Judge may decide the appeal on the basis of such facts, or in his discretion, may set the appeal for hearing and take such further evidence as deemed necessary to determine the appeal.

(d) The Administrative Law Judge may require portions of the evidence to be transcribed as necessary for rendering a decision.

R994-406-311. Rescheduling, Continuing and Reopening a Hearing and Decisions when a Party Fails to Participate.

(1) If a party knows in advance of the hearing that they will be unable to participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be made prior to the hearing. If the request is not made prior to the hearing, the party must show cause for failing to make a timely request.

(b) The request must be made orally or in writing to the ALJ scheduled to hear the case or the ALJ's supervisor.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(2) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ will issue a decision based on the available evidence.

(3) Any party failing to participate, personally or by authorized representative, in a hearing may request that the hearing be reopened.

(a) The request will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(b) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening;

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Attorneys and representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, taking additional evidence might effect the outcome of the case.

(e) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(d) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(e) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the Division of Adjudication within ten days of the issuance of the decision made pursuant to paragraph (2) above. If the request is made after the expiration of the time limit, the party requesting reopening must show good cause for not making the request within ten days.

(f) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other party an opportunity to respond to the request, grant or deny the request on the basis of the official record in the case.

(4) The ALJ may, on the ALJ's 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.

R994-406-312. Withdrawal of Appeal.

Any party who has filed an appeal from a decision of the Department may request withdrawal of the appeal by making a request to an Administrative Law Judge, explaining the reasons for the withdrawal. The Administrative Law Judge may deny such a request if the withdrawal of the appeal could result in a disservice to any of the parties, including the Department.

R994-406-313. Division a Party to Proceedings.

The Division is the authorized agent of the Department. The Act requires that the Department be given notice of the pendency of an appeal and that the Department will be a party to the proceedings. Unless the Department designates a representative who is authorized to represent the Department in appeals, notification of appeals will be sent to the Division of Workforce Information and Payment Services which rendered the initial determination. As a party to the hearing the Department or its representatives have all rights and responsibilities of other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions of the Administrative Law Judge. Where the burden of proof is with the Department, the failure of the Department to meet that burden may result in an unfavorable ruling for the Department. The Administrative Law Judge cannot act as the agent for the Department and therefore is limited to including in the record only that evidence which is in the Department files or submitted by Department representatives. Witnesses for the Department may be called on the motion of the Administrative Law Judge when the need for such testimony is necessary to clarify rather than impeach the testimony or evidence presented by the other parties, or the need for such witnesses or evidence could not have been anticipated by the Department prior to the hearing.

R994-406-314. Prompt Notification of Decision.

All decisions by Administrative Law Judges which affect the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law and will include or be accompanied by a notice specifying the

further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

R994-406-315. Finality of Decision.

Decisions of the Administrative Law Judge are binding on all parties and are the final decision of the Department as provided by Subsection 35A-4-508(7) unless appealed within 30 days of mailing or delivery of the decision.]

R994-406-401. Fault Overpayments - General Definition.

Subsection 35A-4-406(4) identifies the repayment requirements of individuals who have been overpaid due to fraud, or due to claimant fault not constituting fraud.

R994-406-402. Fraud.

(1) When the Department has evidence of an overpayment resulting from the claimant's failure to properly report material information, the claimant will be notified of the issue, given an opportunity to provide information concerning the issue, and told that payments are being held pending a decision. In such circumstances, payment of benefits for claims currently in process may be held for up to two weeks pending the issuance of a fraud or overpayment decision. Benefit payments which have not been paid for eligible weeks prior to the disqualification period under Subsection 35A-4-405(5), shall be used to reduce such an overpayment. 100% of the benefit check to which he is entitled will be used to reduce the overpayment.

(2) The overpayment and penalties for fraud are established only when benefits have been denied under Subsection 35A-4-405(5). The repayment amount is determined by Subsection 35A-4-405(5) and, following a decision, repayment must be made in cash before the claimant will be eligible to establish a waiting week credit or receive future benefit payments. Therefore, the overpayment and penalties cannot be offset.

R994-406-403. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present. If one or more element 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 of him in written documents regarding his Unemployment Insurance claim, as well as any verbal instructions given by a Department representative. Before certifying that he is eligible for benefits, he is under obligation to make proper inquiry if he has any questions to determine definitely what is required. Therefore, when a claimant has knowledge that certain information may affect his claim, but makes his own determination that the information is not material or if he ignores it, he is at fault.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for an overpayment created if he fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks he claims benefits.

(b) When the claimant advises the Department prior to receiving a settlement that he has filed a grievance with his employer, and he makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation he receives, he will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which he receives 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 Unemployment Insurance Fund 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 he is claiming in a grievance proceeding, benefits will be withheld on the basis that he is not unemployed because he anticipates receipt of wages. In this case, the claimant should file weekly claims and if he does not receive back wages when the grievance is resolved, benefits will be paid for weeks properly claimed provided he is otherwise eligible.

R994-406-404. Method of Repayment of Fault Overpayments.

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If payment is made by personal check, no benefit checks will be released until the personal check has been honored by the bank. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 50% of the benefit check to which he is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required of all overpayments established under Subsection 35A-4-405(5). At the discretion of the Department, however, the claimant may not be required to make payments and legal collection proceedings may be held in abeyance. The overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion may be exercised:

(i) if the Department or the employer share fault in the creation of the overpayment, or

(ii) if installment payments would impose unreasonable hardship such as in the case of an individual with an income which does not provide for additional money beyond minimum living requirements.

(b) The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(3) Installment Payments.

(a) If repayment in full has not been made within 90 days of the first billing the Department shall enter into an agreement with the claimant whereby repayment of the money owed is collectible by monthly installments. The Department shall notify the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, he may request a review within ten days of the date written notice is mailed or delivered.

(b) Installment agreements shall be established as follows:

Overpayments Equaling Minimum Monthly Payment

\$3,000 or less 50% of claimant's weekly benefit entitlement

3,001 to 5,000 100% of claimant's weekly benefit entitlement

5,001 to 10,000 125% of claimant's weekly benefit entitlement
10,001 or more 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases of extreme hardship. An ability to make a minimal payment is presumed if the claimant has a household income which is in excess of the poverty level guidelines as established by the federal government and used to grant waivers of overpayments under Subsection 35A-4-406(5). The installment agreement will be reviewed periodically and adjustments made based upon changes in the claimant's income or circumstance. A due date will be established for each installment agreement which is mutually agreed upon by the claimant and the Department.

(4) Collection Procedures.

(a) Billings are sent to claimants with overpayments on a monthly basis. After 30 days, if payment is not made, the account is considered delinquent. If no payment has been received in 90 days the individual is notified that a warrant will be filed unless a payment is received within 10 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments are reported to the State Auditor for collection whereby any refunds due to the individual from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(5) Offset In Time.

Offset in time occurs when the claimant files valid weekly claims to replace weeks of benefits which were overpaid. When an overpayment is established after the claimant has exhausted all benefits, the claimant may file claims for additional weeks during the same benefit year provided he is otherwise eligible. Offset in time will be allowed on claims that have expired if a written request is made within 30 days of the notification of the overpayment. No offset in time will be allowed on overpayments established under Subsection 35A-4-405(5). One hundred percent (100%) of the weekly benefit amount for the weeks claimed will be credited against the established overpayment up to the amount of the balance owed to the Department. No penalty for late filing will be assessed when a claimant is otherwise eligible to file claims to offset in time.

R994-406-501. Non-Fault Overpayments - General Definition.

Subsection 35A-4-406(5) identifies the repayment requirements of individuals who have received an overpayment of benefits through no fault of their own. Such overpayments are referred to as "accounts not receivable" (ANR).

R994-406-502. Responsibility.

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. If the claimant has provided such information, and then receives benefits to which he is not entitled through an error of the Department or an employer, he is not at fault for the overpayment.

(2) "Through no fault of his own" does not mean the claimant can shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his claim.

R994-406-503. Method of Repayment.

Even though the claimant is without fault in the creation of the overpayment, 50 percent of the claimant's weekly benefit amount will be deducted from any future benefits payable to him until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

R994-406-504. Waiver of Recovery of Overpayment.

(1) If waiver of recovery of overpayment is granted under Subsection 35A-4-406(5), the amount of the overpayment owing at the time the request is granted is withdrawn, forgiven or forgotten and the claimant has no further repayment obligation. Granting of a waiver will not be retroactive for any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request.

(a) Time Limitation for Requesting Waiver.

A waiver must be requested within 10 days of the notification of opportunity to request a waiver or within 10 days of the first offset of benefits following a reopening or upon a showing of a significant change of the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were reasonable or beyond his control.

(b) Basic Needs of Survival.

The claimant may be granted a waiver of the overpayment if recovery by 50 percent offset would create an inability to pay for the basic needs of survival for the immediate family, dependents and other household members. In making this waiver determination, the Department shall take into consideration all the potential resources of the claimant, the claimant's family, dependents and other household members. The claimant will be required to provide documentation of claimed resources. The claimant must also provide social security numbers of family members, dependents and household members. "Economically disadvantaged" for federal programs is defined as 70 percent of the Lower Living Standard Income Level (LLSIL). "Inability to meet the basic needs of survival" is defined consistent with "economically disadvantaged." Therefore, if the claimant's total family resources in relation to family size are not in excess of 70 percent of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within an indefinite period of time. Individual expenses will not be considered.

(c) Indefinite Period.

An indefinite period of time is defined as the current month and at least the next two months. Therefore, the duration of the financial hardship must be expected to last at least three months. If the claimant or household members expect to return to work within the three months the anticipated income will be included in determining if he lacks basic needs of survival for an indefinite period of time. Available resources will be averaged for the three months.

R994-406-505. Overpayments Not Set Up (NSU).

The minimum overpayment amount which will be established is determined by multiplying the state maximum weekly benefit amount by 15% and rounding the result to the next highest \$5. Overpayments of (\$10 or less) less than this amount do not justify the expense of collection and will not be (established) set up (NSU). Accumulations of overpaid benefits, accruing (from) for more than one week, which equal more than (\$10) the minimum overpayment amount will be established.

KEY: appellate procedures, jurisdiction, overpayments, unemployment compensation

[March 4, 2003]2004

Notice of Continuation May 23, 2002

35A-4-406(2)

35A-4-406(3)

35A-4-406(4)

35A-4-406(5)



Workforce Services, Workforce Information and Payment Services **R994-508** Appeal Procedures

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 26929

FILED: 02/02/2004, 13:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The unemployment rules are being rewritten to ensure that they comply with current law and practice.

SUMMARY OF THE RULE OR CHANGE: The Department has taken all its provisions relating to appeal procedures out of other rules and put them in this rule. The rule was also rewritten to remove references to antiquated procedures. Under Utah code, if a party does not provide information to the Department when requested regarding a separation, the party is no longer a party in interest. Under this rule, when that penalty will apply has been defined. It is in the best interest of all parties that accurate and complete information be obtained before a decision on benefits is made. Some employers have refused to provide information until the hearing level which has resulted in benefits being improperly awarded. If an employer does not provide the information, the Department will follow the statute and make them ineligible for relief of charges but it will only be done in situations where the employer is aware of the rules and understands Department procedures. It is the Department's position that a small business unfamiliar with Department rules should not be held to the same standard as an employer, or the employer representative answering claims on a regular basis. The costs have previously been paid by all employers instead of the offending employers. All other changes to the rule are nonsubstantive in nature.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 103; Title 35A, Chapter 406; and Title 35A, Chapter 508

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally-funded program and

there are no substantive changes being made to this rule. These changes reflect current Department practices

❖ LOCAL GOVERNMENTS: In addition to the reasons stated in relation to the State budget, there will be no costs or savings to local government as this is a federally-funded, state-wide program that does not affect local government.

❖ OTHER PERSONS: There will be no costs or savings to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to current law or rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs to any person for the reasons stated in relation to the State budget. This amendment does not make any substantive changes to current law or rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed repeal and reenactment will have no fiscal impact on business as there are no compliance costs and the rule merely reflects current statutory authority.

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

**WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES**
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/22/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

[R994-508- Appeal Procedures.]

R994-508-201. Appeal of Contribution Decisions—General Definition.

Section 35A-4-508(2) provides the opportunity to appeal a contribution decision. Examples of decisions which may be appealed include, but are not limited to: whether an employing unit is an employer, whether services performed are employment, and determinations involving contribution liability. The Department will also require compliance with Sections R994-406-301 through R994-406-315 which relates to appeals of benefit decisions and therefore applies to appeals of contribution decisions.

R994-508-501. Review by Workforce Appeals Board—General Definition.

Subsection 35A-4-508(5) explains the procedure under which the Workforce Appeals Board will accept or reject cases appealed from decisions of Administrative Law Judges and provides for sending the disputed matters for further judicial review. Subsection 35A-1-304(2) explains conditions under which new evidence will be accepted by the Board for review.

R994-508-502. Appeals to the Board.

(1) Appeals as of Right.

If the Administrative Law Judge's decision did not affirm a prior decision, the Board will accept a timely appeal from any party to that decision.

(2) Appeals Not Accepted by the Board.

The Workforce Appeals Board has the discretion not to accept an appeal if the decision of the Administrative Law Judge affirms a prior decision of the Department. Prior to making a determination not to accept an appeal, a review will be made of the record by an individual designated by the Board.

(3) Filing an Appeal.

(a) An appeal to the Workforce Appeals Board from a decision of an Administrative Law Judge must be on an appeal form provided by the Department, or a written statement which includes:

- (i) the name of the appellant;
- (ii) the name and social security number of the claimant in cases involving benefit rights;
- (iii) the identification of the case on which the appeal is being made; and
- (iv) the grounds upon which the appeal is made. However, the issues presented in the appeal are not limited to the issues presented at the hearing. Further, the review by the Board will not be limited to the issues raised by the appeal. The appeal may be accompanied by references to or excerpts from the record made before the Administrative Law Judge.

R994-508-503. Workforce Appeals Board of Administrative Law Judge Decisions.

(1) Notice that An Appeal Has Been Filed.

All parties entitled to receive the decision of the Administrative Law Judge will receive notice from the Department that an appeal has been filed with the Workforce Appeals Board.

(2) Presentation of Argument.

In its review of an appeal, the Workforce Appeals Board may in its discretion allow the parties to file written arguments. When written arguments are allowed, the parties will be granted 15 days from the date of notification to submit their arguments. No other argument will be allowed, unless the Board determines that additional written argument is necessary to a proper understanding of the appeal.

R994-508-504. Notice of Decisions from the Workforce Appeals Board.

(1) A copy of the decision of the Workforce Appeals Board, including an explanation of the right to judicial review, will be promptly delivered or mailed to each interested party.

(2) In each case where the Workforce Appeals Board declines to accept an appeal, the findings of fact and decision of the Administrative Law Judge will be deemed to be the findings and decision of the Workforce Appeals Board and will be subject to judicial review upon action commenced within ten days after the

decision of the Workforce Appeals Board declining acceptance of the appeal has become final.

R994-508-505. Withdrawals.

Any party who has filed an appeal from a decision of an Administrative Law Judge may request withdrawal of the appeal by making a written statement to the Workforce Appeals Board explaining the reasons for the withdrawal. The Workforce Appeals Board may deny such a request if it could result in a disservice to any of the parties, including the Department.

R994-508-506. Postponements and Untimely Appeals.

The Workforce Appeals Board will consider and dispose of untimely appeals and requests for postponement in the same manner provided in the regulations pertaining to Subsection 35A-4-406(3).

R994-508-601. Appeals Hearings.

These rules govern procedures in administrative hearings before the Appeals Tribunal of the Utah Department of Workforce Services and shall be construed to secure the just, speedy and inexpensive determination of every appeal proceeding.

R994-508-602. Appeal Hearings Designated As Formal Adjudicative Proceedings.

All initial decisions made by the Department of Workforce Services are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial decisions must be filed within 10 calendar days of the date of issuance, plus five days if the initial decision is mailed, and must meet the requirements of Subsections 63-46b-3(1)(a) and 63-46b-3(1)(b) of the UAPA. Proceedings on such appeals will be conducted consistent with the provisions of the UAPA governing formal adjudicative proceedings.

R994-508-603. Pleadings.

(1) Generally, the factual and legal issues are defined by the parties during the exempt initial proceeding. Therefore, further written statements, such as a response from the respondent party, will not usually be required. However, respondent parties may file a response if they want to raise additional issues or respond to issues raised in the appeal. Such a response must be filed within 14 calendar days from the date of notification that an appeal has been filed and the respondent party must send a copy by mail to the Administrative Law Judge (ALJ) and all known parties. An extension of the response time may be granted at the discretion of the ALJ. (2) Occasionally, the Administrative Law Judge may require an appellant party to file a supplemental statement of appeal or a respondent party to file a response when, in the discretion of the ALJ, this additional information is necessary for the parties to properly prepare for the hearing. Such additional statements must be filed within the time limitation established by the ALJ, and a copy must be sent by mail to all known parties.

R994-508-604. Default for Failure to Make an Adequate Response.

The respondent will not be held in default for failure to make an adequate written response unless it is shown that the lack of the response, or omissions in the response, adversely affected the ability to prepare for the hearing. If there is reasonable cause for failure to make an adequate response, the hearing may be continued.

R994-508-605. Department to Provide Information.

The information which the Department used to make an initial decision and the reasoning upon which that decision was based will generally be provided to the parties. If the Department fails to provide information to the parties necessary for the preparation of the hearing, the ALJ shall not become an advocate for the Department, but shall take reasonable steps to obtain such information, either prior to or during the hearing. If a party is prejudiced in his preparation for the hearing by the Department's failure to provide the information, the ALJ may reschedule the hearing. If the Department's initial decision failed to state adequately the facts or reasoning on which it was based, the ALJ may vacate the decision and remand it to the Department for a new decision which must include specific findings of fact and reasoning.

R994-508-606. Discovery.

(1) Discovery is a procedure for obtaining information which is necessary for the preparation of a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence or witnesses to be presented at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not voluntarily provided, the party requesting the information may request that the ALJ compel the information through a verbal or written order or issuance of a subpoena. In deciding such requests, the ALJ shall balance the need for such information with the burden such requests place upon the opposing party and the need to promptly decide the appeal. (2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when:

- (a) informal discovery was inadequate to provide the information required;
- (b) there is no other available alternative that would be less costly or less intimidating;
- (c) it is not unduly burdensome;
- (d) it is necessary for the parties to properly prepare for the hearing; and
- (e) it does not cause unreasonable delays. Formal discovery includes requests for admissions, interrogatories and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-607. Telephone Hearings.

(1) At the discretion of the ALJ, any party may be permitted to testify by telephone. Parties who do not reside within 50 miles or approximately one hour of commuting distance from the location of a scheduled hearing will be notified of the opportunity to testify by telephone. A party or a witness scheduled to testify by telephone may participate in person by reporting to the place of hearing. Telephone participation will be permitted only if adequate telephone facilities exist.

(2) Documents to be offered into evidence in a telephone hearing will be mailed to all parties prior to the hearing when possible. If parties do not receive the documents prior to the hearing, they will be given an opportunity to request that the hearing be reopened to make comments on the documents after they are received.

(3) The appeals office will permit collect calls from parties participating in telephone hearings and their witnesses; however, professional representatives not at the physical location of their client must pay their own telephone charges. If a party or witness has a physical impairment precluding effective participation by telephone, has numerous witnesses, large amounts of documentary evidence, or any other established hindrance or legitimate disadvantage to a telephonic hearing, an in person hearing will be scheduled.

R994-508-608. Ex Parte Communications.

No parties will be permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case either before or after the hearing, prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any discussions between the parties and the ALJ on procedural issues or inadvertent ex parte information regarding the merits of the case will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue or who do not provide factual information and are not expected to participate in the hearing of the case, are not ex parte communications and do not need to be made a part of the record.

R994-508-609. Correction of Error and Augmentation of the Record.

Any party may request correction of an ALJ decision if the request is made in writing and filed or mailed within 30 calendar days of the date of the decision. The ALJ retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to Subsections 35A-4-406(2) and 35A-4-406(3) unless the Workforce Appeals Board has accepted an appeal. Whenever a request for correction is submitted to the ALJ, a decision will be issued and new appeal rights to the Workforce Appeals Board will be established.

R994-508-610. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ remove himself from a case on the basis of partiality, interest or prejudice. The request for removal must be made in writing prior to the hearing, unless the reason for the request was not or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees that he should be reassigned, another ALJ will be assigned to the case. However, if the ALJ finds no reason to remove himself, he will rule on the request verbally during the hearing and explain the basis for the ruling. Challenges to the partiality of the ALJ will not result in a delay of the hearing. Appeals pertaining to the partiality of the ALJ may be filed consistent with the time limitations for appealing the decision.

**KEY: unemployment compensation, appellate procedures
1994**

Notice of Continuation June 11, 2003

35A-4-508(2)

35A-4-508(5)

35A-4-508(6)

R994-508. Appeal Procedures.**R994-508-101. Right to Appeal an Initial Department Determination.**

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) If the initial Department determination was delivered to the party, the time permitted for an appeal is ten calendar days. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. If the determination was sent through the U.S. Mail, an additional five calendar days will be added to the time allowed for an appeal from the initial Department determination. Therefore, the amount of time permitted for filing an appeal from any initial Department determination sent through the U.S. Mail is fifteen calendar days unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the post mark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an

employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994-508-105. Response to an Appeal.

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

R994-508-106. Notice of the Hearing.

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

- (a) the time and place of the hearing;
- (b) the right to be represented at the hearing;
- (c) the right to request an in-person hearing;
- (d) the legal issues to be considered at the hearing;
- (e) the procedure for submitting written documents;
- (f) the consequences of not participating;
- (g) the procedures and limitations for requesting a continuance or rescheduling; and
- (h) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

R994-508-107. Department to Provide Documents.

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the

Department's relevant documentary information to the parties with the notice of hearing.

R994-508-108. Discovery.

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

- (a) informal discovery is inadequate to obtain the information required;
- (b) there is no other available alternative that would be less costly or less intimidating;
- (c) it is not unduly burdensome;
- (d) it is necessary for the parties to properly prepare for the hearing; and
- (e) it does not cause unreasonable delays.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-109. Hearing Procedure.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion

or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

- (a) reschedule the hearing to another time;
- (b) allow the parties time to review the documents at an in-person hearing;
- (c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or

(d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-110. Telephone Hearings.

(1) Hearings are usually scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing.

(2) If a party prefers an in-person hearing, the party must contact the ALJ assigned to hear the case and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not

responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will permit collect calls from parties and their witnesses participating in telephone hearings; however, professional representatives not at the physical location of their client must pay their own telephone charges.

R994-508-111. Evidence, Including Hearsay Evidence.

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance system.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

R986-508-112. Procedure For Use of an Interpreter at the Hearing.

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

R994-508-113. Department a Party to Proceedings.

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

R994-508-114. Ex Parte Communications.

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of

the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

R994-508-115. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

R986-508-116. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

R986-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). 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. If no decision has yet been issued, the request should be made without unnecessary delay.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the

reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case.

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

R986-508-118. What Constitutes Grounds to Reopen a Hearing.

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might effect the outcome of the case.

(3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

R994-508-120. Withdrawal of Appeal.

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-121. Prompt Notification of Decision.

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

R994-508-122. Correction of Error and Augmentation of the Record.

A party may request correction of an ALJ decision if the request is made in writing and filed within 30 calendar days of the date of the decision. The ALJ retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to Utah Code Subsections 35A-4-406(2) and 35A-4-406(3) unless the Board has accepted an appeal. If the ALJ agrees to grant the request for correction, a new decision will be issued and new appeal rights to the Board will be established. If the ALJ denies the request, the request will be treated as an appeal to the Board.

R994-508-123. Finality of Decision.

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

R994-508-201. Attorney Fees.

(1) An attorney or other authorized representative may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement unless such a limitation would preclude the claimant from pursuing an appeal to the Court of Appeals and/or the Supreme Court or would deprive the client of the right to representation.

R994-508-202. Petition for Approval of Fee.

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

R994-508-203. Criteria for Evaluation of Fee Petition.

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in:

- preparation of the case;
- attending the hearing;
- preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and
- further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

- preparedness of the representative;
- organization and presentation of the case;
- avoidance of undue delays. An attorney or representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and.
- the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

R994-508-204. Appeal of Attorney's Fee.

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

R994-508-301. Appeal From a Decision of an ALJ.

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

R994-508-302. Time Limit for Filing an Appeal to the Board.

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

R994-508-303. Procedure for Filing an Appeal to the Board.

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

- the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;
- the name and social security number of the claimant in cases involving claims for unemployment benefits;
- the grounds for appeal; and
- the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

R994-508-304. Response to an Appeal to the Board.

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board may remand the case to the Department or the ALJ when appropriate. (5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

R994-508-306. Reconsideration of a decision of the Board.

A party may request reconsideration of a decision of the Board in accordance with Utah Code Subsection 63-46b-13.

R994-508-307. Withdrawal of Appeal to the Board.

If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must

show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within 30 days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-401. Jurisdiction and Reconsideration of Decisions.

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but

does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-406 for a period of one year after the discovery of the fraud.

KEY: unemployment compensation, appellate procedures
2004

Notice of Continuation June 11, 2003

35A-4-508(2)

35A-4-508(5)

35A-4-508(6)

35A-4-406

35A-4-103



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 March 16, 2004. At its option, the agency may hold public hearings.

From the end of the waiting period through June 14, 2004, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code Section 63-46a-6 (2001)*; and *Utah Administrative Code Rule R15-2*, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

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

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 26806
 Filed: 01/29/2004, 10:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to implement suggestions made by the insurance industry during the recently completed comment period.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule correct grammar; add a new definition for the term "issue age;" remove a requirement for endorsements; and adds a rule reference for clarification purposes. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the December 15, 2003, issue of the Utah State Bulletin, on page 33. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 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:** The proposed changes to this rule will not create nor reduce the departments workload nor will it impact the revenues of the department.
- ❖ **LOCAL GOVERNMENTS:** This rule only affects the relationship between the department and its licensees. It will have no affect on cities, counties, or any other local government.
- ❖ **OTHER PERSONS:** The proposed changes to this rule will have no fiscal impact on Utah's health insurance industry nor the public. It will not create nor reduce the industries workload nor the cost of doing business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed changes to this rule will have no fiscal impact on Utah's health insurance industry nor the public. It will not create nor reduce the industries workload nor the cost of doing business.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes to this rule will have no fiscal impact on Utah businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
 Room 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

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

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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 [is]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.

(b) A new filing is required if the clerical or typographical corrections are made more than 30 days after the filed date of the original filing. The filer will need to reference the original filing.

(7) Filing withdrawal. A filer must notify the department when the filer withdraws 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. A transmittal, as provided in R590-220-3(2), must be on the top of the filing. The transmittal form must be properly completed.

(2) Filing Description. 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) Marketing Facts. If the NAIC transmittal is used, the company must:

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

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

(iii) 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) 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. A foreign insurer and filer must first submit filings to their domicile state.

(i) If a filing was submitted to the domicile state, provide a stamped copy of the approval letter from the domicile state for the exact same filing.

(ii) If a filing was not submitted to the domicile state, or the domicile state did not provide specific approval for the filing, then alternate information must be provided.

(5) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must identify the type of group, and include either a 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) 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.

R590-220-7. Procedures for Form Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form or printer's proof format. A draft may not be submitted.

(d) Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission.

(e) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(2) Application Filing. Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing. If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filing. Each type of insurance must be filed separately. A policy filing consists of one policy form, including its related forms, such as outline of coverage, certificate or endorsement, and an actuarial memorandum.

(a) Only one policy filing for a single type of insurance may be filed, except as stated in subsection (b).

(b) A Medicare supplement filing may include more than one policy filing but each filing is limited to only one of each of the Medicare supplement plans A through J.

(4) Endorsement Only Filing.

(a) Up to three related endorsements may be filed together.

(b) A single endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) The filing must include:

(i) A listing of all base policy form numbers, title and dates filed with the department, and

(ii) a description of how each filed endorsement affects the base policy.

(d) ~~An endorsement may not be used to change a basic feature of the policy form.~~

(e) ~~J~~Unrelated endorsements may not be filed together.

(5) Outline of Coverage. If an outline of coverage is required to be issued with a policy, the outline of coverage must be filed when the policy is filed.

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) A rate 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 ~~[effecting]~~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.

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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 ~~[are]~~is advised to review 31A-8, 31A-22 Parts VI and VII, 31A-30, Rules R590-76, R590-131, R590-167, ~~[and]~~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." 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.

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

(1) A combination filing is a policy or endorsement, which ~~[create]~~creates a product that provides both life and accident and health insurance benefits. The two types of acceptable filings ~~[is]~~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 must include transmittals for both the Life Insurance Division and the Health Insurance Division~~s~~.

(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.

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KEY: health insurance filings

2004

31A-2-201

31A-2-201.1

31A-2-202

31A-22-605

31A-22-620

31A-30-106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The proposed changes to this rule will not create nor reduce the departments workload nor will it impact the revenues of the department.

❖ **LOCAL GOVERNMENTS:** This rule only affects the relationship between the department and its licensees. It will have no affect on cities, counties, or any other local government.

❖ **OTHER PERSONS:** It has been reported to the department that the changes to this rule will increase the clerical workload of one of the property and casualty carriers licensed to sell insurance in Utah. This increased workload will not necessitate the hiring of additional personnel. These changes have been made for clarification purposes and should have no fiscal impact on insurance companies, agents, or consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It has been reported to the department that the changes to this rule will increase the clerical workload of one of the property and casualty carriers licensed to sell insurance in Utah. This increased workload will not necessitate the hiring of additional personnel. These changes have been made for clarification purposes and should have no fiscal impact on insurance companies, agents, or consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes to this rule will have very little fiscal impact on the property and casualty insurance industry doing business in Utah.

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 03/16/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-225. Submission of Property and Casualty Rate and Form Filings.

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R590-225-6. Filing Submission Requirements.

A filing must be submitted by market type and type of insurance, not by annual statement line number. A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description. A filer may submit a filing for more than one insurer if all applicable companies are listed on the transmittal and a copy of the transmittal is submitted for each company [filer may not request a filing for more than one insurer unless the filing contains a separate transmittal for each insurer to whom the filing applies]. A complete filing consists of the following documents submitted in the following order:

(1) "NAIC Uniform Property and Casualty Transmittal Document." COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

- (a) "NAIC Coding Matrix;"
- (b) "NAIC Instruction Sheet;" and
- (c) "Utah Property and Casualty Content Standards."

(2) Do not submit the documents described in (1)(a),(b), and (c) with a filing.

(3) Filing Description. The following information must be included in the Filing Description on the transmittal and presented in the order shown below:

- (a) Provide a detailed description of the purpose of the filing.
- (b) Describe the benefits and features of each form, rate or supplementary information contained in the filing, including specific features and options;
- (c) Identify any new, unusual or controversial provision.
- (d) Identify any unresolved previously prohibited provision and explain why the provision is included in the filing;
- (e) 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;
- (f) If filing an application, or endorsement, 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.

(4) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. Section 21 must contain this statement:

"BY SIGNING THE TRANSMITTAL I CERTIFY[(YOUR NAME) CERTIFIES] THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH [THIS RULE] UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

A filing will be rejected if the certification is missing or incomplete. A certification that is inaccurate may subject the filer to administrative action.

(5) 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.

(6) 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 supplementary information.

(7) Return Notification Materials.

(a) Return notification materials are limited to:

- (i) a copy of the transmittal; and
- (ii) a self-addressed, stamped envelope.

(b) Additional documents submitted for return will be discarded.

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

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KEY: property casualty insurance filing

2004

31A-2-201

31A-2-201.1

31A-2-202

31A-19a-203



End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code Subsection 63-46a-7(1)* (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code Section 63-46a-7* (2001); and *Utah Administrative Code Section R15-4-8*.

Public Safety, Fire Marshal R710-4

Buildings Under the Jurisdiction of the State Fire Prevention Board

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 26920

FILED: 01/27/2004, 18:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and determined that a 120-Day (emergency) Rule amendment was in order to correct some errors made in the adoption of Rule R710-4 that went into effect on January 2, 2004. It was noted that the International Fire Code, 2003 edition, was adopted referencing the usage of an incorporated reference that was not adopted by the administrative rule or statute. The Board voted to make immediate amendments to the existing rule to correct this error. The Board will finalize these changes after complete and proper notice to all affected at the next scheduled Board meeting on March 9, 2004.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to Rule R710-4 are as follows: 1) in Section R710-4-2, it is proposed to add the definition for "Appreciable Depth"; and 2) in Subsections R710-4-3(3.1.1) through (3.1.3), it is proposed to eliminate the reference to the International Existing Building Code and add definitions to all three sections that ensure that changes to the structure maintains a reasonable level of fire and life safety and does not create a distinct hazard to life or property without referencing the International Existing Building Code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because these proposed changes do not effect the state.
- ❖ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed changes do not effect local government.
- ❖ **OTHER PERSONS:** There is also no aggregate anticipated cost or savings to other persons because these proposed changes do not affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons with the enactment of this rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses for the enactment of these rule amendments.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The 2003 edition of the International Fire Code was adopted by administrative rule on January 2, 2004. It is noted that the International Fire Code referenced the usage of the International Existing Building Code in three sections in Chapter 1. The International Existing Building Code was not adopted as an incorporated reference by the Utah Building Codes Commission or the Utah Fire Prevention Board for the State of Utah. The error of leaving this referenced code in the International Fire Code places the user in violation of the adopted standards of the State of Utah.

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

**PUBLIC SAFETY
FIRE MARSHAL**
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

THIS RULE IS EFFECTIVE ON: 01/28/2004

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.

R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2003 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, 2002 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 13R, Installation of Sprinkler Systems - Residential Occupancies up to and Including Four Stories in Height, 2002 edition, except as amended by provisions listed in R710-4-3, et seq.

1.4 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 2002 edition, except as amended by provisions listed in R710-4-3, et seq.

1.5 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), 2002 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953. Wherever there are sections or tables in the International Fire Code (IFC) that reference "ICC Electrical Standard", the reference to "ICC Electrical Standard" shall be replaced with "National Electric Code".

1.6 International Building Code (IBC), 2003 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.7 International Fire Code (IFC), 2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-4-3, et seq.

1.8 International Mechanical Code (IMC), 2003 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.9 International Fuel Gas Code (IFGC), 2003 edition, as published by the International Code Council, and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.10 International Plumbing Code (IPC), 2003 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.11 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

2.1 "Appreciable Depth" means a depth greater than 1/4 inch.

2.[4]2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.[2]3 "AWWA" means American Water Works Association.

2.[3]4 "Board" means Utah Fire Prevention Board.

2.[4]5 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.[5]6 "Fire Chief or Chief of the Department" means the AHJ.

2.[6]7 "Fire Department" means the AHJ.

2.[7]8 "Fire Marshal" means the AHJ.

2.[8]9 "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.[9]10 "IBC" means International Building Code.

2.[10]11 "ICC" means International Code Council, Inc.

2.[11]12 "IFC" means International Fire Code.

2.[12]13 "IFGC" means International Fuel Gas Code.

2.[13]14 "IMC" means International Mechanical Code.

2.[14]15 "IPC" means International Plumbing Code.

2.[15]16 "LSC" means Life Safety Code.

2.[16]17 "NEC" means National Electric Code.

- 2.[+]18 "NFPA" means National Fire Protection Association.
 2.[+]19 "SFM" means State Fire Marshal.
 2.[+]20 "UCA" means Utah State Code Annotated 1953 as amended.

R710-4-3. Amendments and Additions.

3.1 Administration

3.1.1 IFC, Chapter 1, Section 102.3 is deleted and rewritten and follows: No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure maintains a reasonable level of fire and life safety and the change to use or occupancy does not create a distinct hazard to life or property as determined by the AHJ.

3.1.2 IFC, Chapter 1, Section 102.4 is deleted and rewritten as follows: The design and construction of new structures shall comply with the International Building Code. Repairs, alterations and additions to existing structures are allowed when such structure maintains a reasonable level of fire and life safety and the change does not create a distinct hazard to life or property as determined by the AHJ.

3.1.3 IFC, Chapter 1, Section 102.5 is deleted and rewritten as follows: The construction, alteration, repair, enlargement, restoration, relocation or movement of existing buildings or structures that are designated as historic buildings are allowed when such historic structures maintains a reasonable level of fire and life safety and the change does not create a distinct hazard to life or property as determined by the AHJ.

3.[+]2 Definitions

3.[+]2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.[+]2.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following:

On line nine add "type 1" in front of the words "assisted living facilities".

3.[+]2.3 IFC, Chapter 2, Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

3.[+]2.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

3.[+]2.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.[2]3 Fire Drills

3.[2]3.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

c. Secondary schools in Group E occupancies shall have a fire drill conducted at least every two months, to a total of four fire drills during the nine-month school year. The first fire drill shall be conducted within the first two weeks of the school year.

d. A-3 occupancies in academic buildings of institutions of higher learning are required to have one fire drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.

2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.

3. The building is not classified a high-rise building.

4. The building does not contain hazardous materials over the allowable quantities by code.

3.[3]4 Door Closures

3.[3]4.1 IFC, Chapter 7, Section 703.2. Add the following Exception. In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors with a rating of 20 minutes or less only.

3.[4]5 Automatic Fire Sprinkler Systems and Commercial Cooking Operations

3.[4]5.1 Inspection and Testing of Automatic Fire Sprinkler Systems

The owner or administrator of each building shall insure the inspection and testing of water based fire protection systems as required in IFC, Chapter 9, Section 901.6.

3.[4]5.2 IFC, Chapter 9, Section 903.2.9 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

3.[4]5.3 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Commercial cooking operation suppression. Automatic fire sprinkler systems protecting commercial kitchen exhaust hood and duct systems with appliances that generate appreciable depth of cooking oils shall be replaced with a UL300 listed system by May 1, 2004.

3.[4]5.4 Water Supply Analysis

3.[4]5.4.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.[4]5.4.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.[4]5.4.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-9-2.1.

3.[5]6 Alternative Automatic Fire-Extinguishing Systems

3.[5]6.1 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.3 Dry chemical hood system suppression. Existing automatic fire-extinguishing systems using dry chemical that protect commercial kitchen exhaust hood and duct systems shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturers date of the cylinders; or 4) Reconfiguring of the system piping.

3.[5]6.2 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.4 Wet chemical hood system suppression. Existing wet chemical fire-extinguishing systems not UL300 listed and protecting commercial kitchen exhaust hood and

duct systems shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturers date of the cylinder; or 4) Reconfiguration of the system piping.

3.[6]7. Fire Alarm Systems

3.[6]7.1 General Provisions

3.[6]7.1.1 Fire alarm system construction documents submitted to the AHJ shall include those items required in IFC, Chapter 9, Section 907.1.1.

3.[6]7.2 Required Installations

3.[6]7.2.1 Fire alarm systems shall be provided as required in IFC, Chapter 9, Section 907, and LSC Chapters as adopted, and in other rules promulgated by the Board.

3.[6]7.2.2 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 100 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.[6]7.2.2.1 Products-of-combustion smoke detectors shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or as required in NFPA, Standard 72, Section 5.3.

3.[6]7.2.2.2 In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.

3.[6]7.2.2.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.[6]7.2.2.4 The fire alarm system shall be connected to a proprietary panel, where provided within the complex.

3.[6]7.3 Main Panel

3.[6]7.3.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.[6]7.3.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.[6]7.4 System Wiring

3.[6]7.4.1 System Wiring shall be in accordance with the following:

3.[6]7.4.1.1 The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

3.[6]7.4.1.2 The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

3.[6]7.4.1.3 Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

3.[6]7.4.2 All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

3.[6]7.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

3.[6]7.6 Fan Shut Down

3.[6]7.6.1 The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

3.[6]7.6.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.[6]7.7 Inspection and Testing

The owner or administrator of each building shall insure maintenance and testing of fire alarm systems as required in IFC, Chapter 9, Section 901.6. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

3.[7]8 Retroactive Installation of Automatic Fire Alarm Systems

3.[7]8.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4 and 907.3.1.9 is deleted.

3.[8]9 Fireworks

3.[8]9.1 IFC, Chapter 33, Section 3301.1.3, Exception 4 is amended to add the following sentence: Fireworks are permitted as allowed in UCA 53-7-220 and UCA 11-3-1.

3.[9]10 Flammable and Combustible Liquids

3.[9]10.1 IFC, Chapter 34, Section 3406.1 is amended to add the following special operation: 8. Sites approved by the AHJ.

3.[9]10.2 IFC, Chapter 34, Section 3406.2 is amended to add the following: On line two after the word "sites" add the words "and sites approved by the AHJ". On line five after the words "borrow pits" add the words "and sites approved by the AHJ".

3.[10]11 Health Care Facilities

3.[10]11.1 LSC Chapters 18, 19, 20 and 21, Sections 18.1.2.4, 19.1.2.4, 20.1.2.2 and 21.1.2.2 (Exiting Through Adjoining Occupancies) exception is deleted.

3.[10]11.2 LSC Chapter 19, Section 19.3.6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

3.[11]12 Time Out and Seclusion Rooms

3.[11]12.1 Time Out and Seclusion Rooms are allowed in occupancies fully protected by an automatic fire sprinkler system and fire alarm system.

3.[11]12.2 A vision panel shall be provided in the room door for observation purposes.

3.[11]12.3 Time Out and Seclusion Room doors may be fitted with a lock which is not releasable from the inside provided the lock automatically releases by the operation of the fire alarm system or power outage.

3.[11]12.4 Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby

adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, public buildings

January 28, 2004

Notice of Continuation June 12, 2002

53-7-204

Public Safety, Fire Marshal R710-9 Rules Pursuant to the Utah Fire Prevention Law

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 26919

FILED: 01/27/2004, 17:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and determined that a 120-day (emergency) Rule amendment was in order to correct some errors made in the adoption of Rule R710-9 that went into effect on January 2, 2004. It was noted that the International Fire Code, 2003 edition, was adopted referencing the usage

of an incorporated reference that was not adopted by the administrative rule or statute. The Board voted to make immediate amendments to the existing rule to correct this error. The Board will finalize these changes after complete and proper notice to all affected at the next scheduled Board meeting on March 9, 2004.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to Rule R710-9 are as follows: 1) in Section R710-9-2, it is proposed to add two definitions, "Appreciable Depth" and "Authority Having Jurisdiction", to the rule; and 2) in Subsections R710-9-6(6.1.1) through (6.1.3), it is proposed to eliminate the reference to the International Existing Building Code and add definitions to all three sections that ensure that changes to the structure maintains a reasonable level of fire and life safety and does not create and distinct hazard to life or property without referencing the International Existing Building Code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because these proposed changes do not effect the state.
- ❖ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed changes do not effect local government.
- ❖ **OTHER PERSONS:** There is also no aggregate anticipated cost or savings to other persons because these proposed changes do not affect other persons.

COMPLIANCE COSTS FOR Affected PERSONS: There is no compliance cost for affected persons with the enactment of this rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses for the enactment of these rule amendments.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The 2003 edition of the International Fire Code was adopted by administrative rule on January 2, 2004. It was noted that the International Fire Code referenced the usage of the International Existing Building Code in three sections in Chapter 1. The International Existing Building Code was not adopted as an incorporated reference by the Utah Building Codes Commission or the Utah Fire Prevention Board for the State of Utah. The error of leaving this referenced code in the International Fire Code places the user in violation of the adopted standards of the State of Utah.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

THIS RULE IS EFFECTIVE ON: 01/28/2004

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-9. Rules Pursuant to the Utah Fire Prevention Law.

R710-9-2. Definitions.

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Administrator" means Fire Service Education Administrator.

2.4 "Appreciable Depth" means a depth greater than 1/4 inch.

2.5 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.[4]6 "Board" means Utah Fire Prevention Board.

2.[5]7 "Certification Council" means Utah Fire Service Certification Council.

2.[6]8 "Coordinator" means Fire Education Program Coordinator.

2.[7]9 "Division" means State Fire Marshal.

2.[8]10 "ICC" means International Code Council, Inc.

2.[9]11 "IFC" means International Fire Code.

2.[10]12 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.[11]13 "LFA" means Local Fire Authority.

2.[12]14 "NFPA" means National Fire Protection Association.

2.[13]15 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.[14]16 "Plan" means Fire Academy Strategic Plan.

2.[15]17 "SFM" means State Fire Marshal or authorized deputy.

2.[16]18 "Standards Council" means Fire Service Standards and Training Council.

2.[17]19 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.[18]20 "UCA" means Utah Code Annotated, 1953.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 Administration

6.1.1 IFC, Chapter 1, Section 102.3 is deleted and rewritten as follows: No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure maintains a reasonable level of fire and life safety and the change to use or occupancy does not create a distinct hazard to life or property as determined by the AHJ.

6.1.2 IFC, Chapter 1, Section 102.4 is deleted and rewritten as follows: The design and construction of new structures shall comply with the International Building Code. Repairs, alterations and additions to existing structures are allowed when such structure maintains a reasonable level of fire and life safety and the change does not create a distinct hazard to life or property as determined by the AHJ.

6.1.3 IFC, Chapter 1, Section 102.5 is deleted and rewritten as follows: The construction, alteration, repair, enlargement, restoration, relocation or movement of existing buildings or structures that are designated as historic buildings are allowed when such historic structures maintains a reasonable level of fire and life safety and the change does not create a distinct hazard to life or property as determined by the AHJ.

6.1.[+]~~4~~ IFC, Chapter 1, Section 102.4 is amended as follows: On line three after the words "Building Code." add the following sentence: "The design and construction of detached one- and two-family dwellings and multiple single-family dwellings (town houses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code."

6.1.[~~2~~]5 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".

6.2 Definitions

6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: Add "Type 1" in front of the words "Assisted living facilities".

6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". After "Detoxification facilities" delete the rest of the paragraph, and add the following: "Ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, Outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and Type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception after Child care facility delete the word "five" and replace it with the word "four".

6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.3 General Precautions Against Fire

6.3.1 IFC, Chapter 3, Section 304.1.2 is amended to delete the following sentence: "Vegetation clearance requirements in urban-wildland interface areas shall be in accordance with the International Urban/Wildland Interface Code."

6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.

6.4 Elevator Recall and Maintenance

6.4.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator and one key for lobby control.

6.5 Building Services and Systems

6.5.1 IFC, Chapter 6, Section 610.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".

6.6 Record Drawings

6.6.1 IFC, Chapter 9, Section 901.2.1 is amended to add the following: The code official has the authority to request record drawings ("as built") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as built") that document all aspects of a fire protection system as installed.

6.7 Fire Protection Systems

6.7.1 Inspection and Testing of Automatic Fire Sprinkler Systems

The owner or administrator of each building shall insure the inspection and testing of water based fire protection systems as required in IFC, Chapter 9, Section 901.6.

6.7.2 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings.

6.7.3 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.7.4 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Commercial cooking operation suppression. Automatic fire sprinkler systems protecting commercial kitchen exhaust hood and duct systems with appliances that generate appreciable depth of cooking oils shall be replaced with a UL300 listed system by May 1, 2004.

6.7.5 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.3 Dry chemical hood system suppression. Existing automatic fire-extinguishing systems using dry chemical that protect commercial kitchen exhaust hood and duct systems shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following

occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturers date of the cylinders; or 4) Reconfiguration of the system piping.

6.7.6 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.4 Wet chemical hood system suppression. Existing wet chemical fire-extinguishing systems not UL300 listed and protecting commercial kitchen exhaust hood and duct systems shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturer date of the cylinder; or 4) Reconfiguration of the system piping.

6.7.7 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.5 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.8 Backflow Protection

6.8.1 The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707.

6.9 Retroactive Installations of Automatic Fire Alarm Systems in Existing Buildings

6.9.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.10 Smoke Alarms

6.10.1 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.10.2 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.11 Means of Egress

6.11.1 IFC, Chapter 10, Section 1009.3 is amended as follows: On line six of Exception 5 delete "7.75" and replace it with "8". On line seven of Exception 5 delete "10" and replace it with "9".

6.11.2 IFC, Chapter 10, Section 1009.11, Exception 4 is deleted and replaced with the following: 4. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

6.11.3 IFC, Chapter 10, Section 1009.11.3 is amended to add the following: Exception: Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83 mm) measured 2 inches (51mm) down from the top of the crown. Such handrail is required to have an indentation on both sides between 0.625 inch (16mm) and 1.5 inches (38mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6mm) deep on each side and shall be at least 0.5 (13mm) high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

6.11.4 IFC, Chapter 10, Section 1012.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.11.5 IFC, Chapter 10, Section 1027.2 is amended to add the following: On line five after the word "fire" add the words "and building".

6.12 Fireworks

6.12.1 IFC, Chapter 33, Section 3301.1.3 is amended to add the following Exception: 10. The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.13 Flammable and Combustible Liquids

6.13.1 IFC, Chapter 34, Section 3404.4.3 is amended as follows: Delete 3403.6 on line three and replace it with 3403.4.

6.14 Liquefied Petroleum Gas

6.14.1 IFC, Chapter 38, Section 3809.12, is amended as follows: Delete 20 from line three and replace it with 10.

R710-9-13. Utah Fire and Rescue Academy.

13.1 The fire service training school shall be known as the Utah Fire and Rescue Academy.

13.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

13.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

13.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

13.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending the Academy in the following categories:

13.5.1 Those participating in the certification process and those who have received certification during the previous contract period.

13.5.2 Those working towards and those who have received an Associate in Fire Science in the previous contract period.

13.5.3 Those who have completed other Academy classes during the previous contract period.

13.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories required in Section 13.5, comparing attendance in the previous contract period.

13.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, a cost analysis of classes provided by the Academy, and the cost per student to the Academy to provide those classes.

13.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

13.8.1 Non-fire service personnel enrolled in college courses.

13.8.2 Volunteer or career fire service personnel enrolled in college credit courses.

13.8.3 Volunteer or career fire service personnel enrolled in non-credit continuing education courses.

13.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

KEY: fire prevention, law

January 28, 2004

Notice of Continuation June 12,2002

53-7-204



End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code Section 63-46a-9* (1998).

Commerce, Occupational and Professional Licensing

R156-5a

Podiatric Physician Licensing Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26917
FILED: 01/27/2004, 12:03

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: Title 58, Chapter 5a, provides for the licensure of podiatric physicians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-5a-201(3) provides that the Podiatric Physician Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 5a, with respect to podiatric physicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 1999, changes were made in 2001 to bring the Division into compliance with the Podiatric Medicine Licensing (PMLexis) examination requirements and to add a section regarding radiology course requirements for unlicensed assistants to take podiatric x-rays. No written comments have been received by the Division with respect to the above rule change or with respect to this rule since it was last reviewed in March 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 5a, with respect to podiatric physicians.

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:

Daniel T. Jones at the above address, by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at dantjones@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 01/27/2004

Commerce, Occupational and Professional Licensing

R156-37c

Utah Controlled Substance Precursor Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26916
FILED: 01/27/2004, 12:01

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 37c, provides for the licensure of controlled substance precursor distributors and purchasers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-37c-4(3) provides that the Controlled Substance Precursor Advisory Board's duties and responsibilities shall be in accordance with Section 58-1-202.

Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 37c, with respect to controlled substance precursor distributors and purchasers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 1999, no changes have been made to the rule. The Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 37c, with respect to controlled substance precursor distributors and purchasers.

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 commond@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 01/27/2004

▼ ————— ▼

Commerce, Occupational and Professional Licensing
R156-39a
Alternative Dispute Resolution Providers Certification Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26915

FILED: 01/27/2004, 11:59

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 39a, provides for the certification of alternative dispute resolution providers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58.

Subsection 58-39a-3(3) provides that the Alternative Dispute Resolution Providers Certification Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 39a, with respect to alternative dispute resolution providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was originally enacted in June 1994 and since it was last reviewed in March 1999, no changes have been made to the rule. Therefore, the Division has received no written comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 39a, with respect to alternative dispute resolution providers.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 01/27/2004

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Commerce, Occupational and Professional Licensing
R156-74
Certified Shorthand Reporters Licensing Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26927

FILED: 02/02/2004, 11:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 74, provides for the licensure of certified shorthand reporters.

Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-74-201(3) provides that the Certified Shorthand Reporters Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 74, with respect to certified shorthand reporters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was enacted in March 1999, no additional changes have been made and the Division has not received any written comments with respect to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 74, with respect to certified shorthand reporters.

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

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 02/02/2004

▼ ————— ▼
**Public Safety, Driver License
R708-30
Motorcycle Rider Training Schools**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26918

FILED: 01/27/2004, 14:48

**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 53-3-903 says, "The division shall develop standards for and administer the Motorcycle Rider Education Program. The division shall make

rules in accordance with Title 63, Chapter 46a. Utah Administrative Rulemaking Act, to implement this chapter".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 rule needs to be continued as per statute to allow someone, who has a desire, to start and be authorized to run a Motorcycle Rider Training School. The rule specifies what the application process is, how to execute an agreement with the division, what standards a school must follow, what constitutes a course curriculum, insurance coverage, instructor information, advertisement, revocation process, and inspection requirements for the division.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Judy Hamaker Mann, Director

EFFECTIVE: 01/27/2004

▼ ————— ▼
**Regents (Board Of), University of Utah,
Administration**

R805-1

**Operating Regulations for Bicycles,
Skateboards and Scooters**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26914

FILED: 01/27/2004, 11:02

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53B-2-106 authorizes Rule R805-1 by authorizing the president of each higher educational institution, with approval of that institution's board of trustees, to enact rules for administration and

operation of the institution. Subsection 53B-3-101 also authorizes Rule R805-1 by allowing the board of regents to pass rules and regulations governing parking and traffic on campuses and related facilities and to enforce the rules and regulations by all appropriate methods; Subsection 53B-3-101 further allows the board of regents to delegate this same authority to the president of each institution so long as the rules and regulations are approved by the institution's board of trustees.

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 University of Utah's ability to ensure the safety of all persons on campus has been facilitated by Rule R805-1. Rule R805-1 regulates the operation of bicycles, skateboards, and scooters on campus and provides clear standards on the proper operation of such means of transportation. Rule R805-1 further gives the University of Utah the ability to sanction students, staff, and faculty who are in violation of this rule and therefore this rule should be continued.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH, ADMINISTRATION
Room 309 PARK BLDG
201 S PRESIDENTS CIR
SALT LAKE CITY UT 84112-9009, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Scott Smith at the above address, by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at scott.smith@legal.utah.edu

AUTHORIZED BY: Phil Johnson

EFFECTIVE: 01/27/2004

▼—————▼
**Regents (Board Of), University of Utah,
Museum of Natural History (Utah)**

R807-1

**Curation of Collections from State
Lands**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26913
FILED: 01/26/2004, 17:28

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 9-8-305(1)(c) authorizes Rule R807-1 by allowing and requiring the Division of State History to make rules for the issuance of permits related to surveying or excavating state lands, including rules that require proof of consultation with the Utah Museum of Natural History regarding curation of collections. Rule R807-1 is also required by Subsections 53B-17-603(2) and (4)(a), which require the Utah Museum of Natural History to make rules to ensure the adequate curation of all collections from lands owned or controlled by the state or its subdivisions and which require all collections recovered from state lands to be deposited at the Utah Museum of Natural History or a curation facility or repository.

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: Rule R807-1 is necessary to the Utah Museum of Natural History and as part of the statewide process for protecting archaeological resources recovered from state lands. Among other things, Rule R807-1 establishes standards for curation and the obligations of repositories and curation facilities and therefore should be continued.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
MUSEUM OF NATURAL HISTORY (UTAH)
Room 302 GEORGE THOMAS BLDG
1390 E PRESIDENTS CIR
SALT LAKE CITY UT 84112-0050, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Scott Smith at the above address, by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at scott.smith@legal.utah.edu

AUTHORIZED BY: Ann Hannibal, Assistant Director

EFFECTIVE: 01/26/2004

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 26805 (AMD): R156-1-106. Division - Duties, Functions, and Responsibilities.
Published: December 15, 2003
Effective: January 20, 2004

No. 26580 (CPR): R156-54-302b. Examination Requirements - Radiology Practical Technician.
Published: December 15, 2003
Effective: January 20, 2004

No. 26777 (AMD): R156-76-102. Definitions.
Published: December 1, 2003
Effective: January 20, 2004

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 26802 (AMD): R414-50. Dental, Oral and Maxillofacial Surgeons.
Published: December 15, 2003
Effective: January 28, 2004

No. 26782 (AMD): R414-51. Dental, Orthodontia.
Published: December 1, 2003
Effective: January 28, 2004

No. 26783 (AMD): R414-53. Eyeglasses Services.
Published: December 1, 2003
Effective: January 28, 2004

No. 26803 (AMD): R414-54. Speech-Language Pathology Services.
Published: December 15, 2003
Effective: January 28, 2004

Human Services

Administration
No. 26822 (AMD): R495-879. Parental Support for Children in Care.
Published: December 15, 2003
Effective: January 26, 2004

Natural Resources

Wildlife Resources
No. 26817 (AMD): R657-5. Taking Big Game.
Published: December 15, 2003
Effective: January 21, 2004

No. 26818 (AMD): R657-17-4. General Deer Permits and Tags.
Published: December 15, 2003
Effective: January 21, 2004

No. 26819 (AMD): R657-38. Dedicated Hunter Program.
Published: December 15, 2003
Effective: January 21, 2004

No. 26820 (AMD): R657-42. Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.
Published: December 15, 2003
Effective: January 21, 2004

Public Safety

Fire Marshal
No. 26801 (AMD): R710-6. Liquefied Petroleum Gas Rules.
Published: December 15, 2003
Effective: January 16, 2004

Workforce Services

Employment Development
No. 26704 (AMD): R986-200. Family Employment Program (FEP).
Published: November 1, 2003
Effective: February 2, 2004

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 1, 2004, including notices of effective date received through February 2, 2004, the effective dates of which are no later than February 15, 2004. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the *Bulletin* and related publications; we hope to have them resolved as soon as possible. *Bulletin* issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/75
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/75
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/76
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
R156-74	Certified Shorthand Reporters Licensing Act Rules	26927	5YR	02/02/2004	2004-4/76
R156-76-102	Definitions	26777	AMD	01/20/2004	2003-23/14
Real Estate					
R162-3	License Status Changes	26838	AMD	02/03/2004	2004-1/7
R162-105	Scope of Authority	26890	5YR	01/13/2004	2004-3/43
R162-202	Residential Mortgage Renewal Period	26837	AMD	02/03/2004	2004-1/10
R162-206	Licensing Examination	26840	NEW	02/03/2004	2004-1/12
R162-207	License Renewal	26839	NEW	02/03/2004	2004-1/13
R162-208	Continuing Education	26836	NEW	02/03/2004	2004-1/14
Securities					
R164-11-2	Hearings for Certain Exchanges of Securities	26481	CPR	01/05/2004	2003-23/83
R164-11-2	Hearings for Certain Exchanges of Securities	26481	AMD	01/05/2004	2003-15/17
Education					
<i>Administration</i>					
R277-437	Student Enrollment Options	26871	5YR	01/05/2004	2004-3/43
R277-462	Comprehensive Guidance Program	26850	AMD	02/05/2004	2004-1/16
R277-486	Professional Staff Cost Program	26828	NEW	01/15/2004	2003-24/5
R277-502	Educator Licensing and Data Retention	26827	AMD	01/15/2004	2003-24/6
R277-517	Athletic Coaching Certification	26852	AMD	02/05/2004	2004-1/18
R277-520	Appropriate Licensing and Assignment of Teachers	26851	R&R	02/05/2004	2004-1/20
R277-524	Paraprofessional Qualifications	26853	NEW	02/05/2004	2004-1/25
R277-720	Child Nutrition Programs	26830	AMD	01/15/2004	2003-24/10
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	26829	NEW	01/15/2004	2003-24/11
R277-735	Standards and Procedures for Corrections Education Programs Serving Inmates of the Utah Department of Corrections	26870	5YR	01/05/2004	2004-3/44
<i>Rehabilitation</i>					
R280-201	USOR ADA Complaint Procedure	26872	5YR	01/05/2004	2004-3/44
R280-202	USOR Procedures for Individuals with the Most Severe Disabilities	26873	5YR	01/05/2004	2004-3/45
Environmental Quality					
<i>Air Quality</i>					
R307-150	Emission Inventories.	26942	5YR	02/09/2004	Not Printed
R307-214	National Emission Standards for Hazardous Air Pollutants.	26939	5YR	02/09/2004	Not Printed
R307-415	Permits: Operating Permit Requirements.	26940	5YR	02/09/2004	Not Printed
R307-417	Permits: Acid Rain Sources.	26941	5YR	02/09/2004	Not Printed
<i>Drinking Water</i>					
R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	26760	AMD	01/01/2004	2003-22/19
<i>Water Quality</i>					
R317-2	Standards of Quality for Waters of the State	26242	CPR	01/06/2004	2003-18/35
R317-2	Standards of Quality for Waters of the State	26242	AMD	01/06/2004	2003-10/27

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Health					
<u>Children's Health Insurance Program</u>					
R382-10	Eligibility	26757	AMD	01/05/2004	2003-22/21
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-9	Federally Qualified Health Centers	26854	NEW	02/03/2004	2004-1/26
R414-50	Dental, Oral and Maxillofacial Surgeons	26802	AMD	01/28/2004	2003-24/13
R414-51	Dental, Orthodontia	26782	AMD	01/28/2004	2003-23/25
R414-52	Optometry Services	26798	AMD	01/01/2004	2003-23/27
R414-53	Eyeglasses Services	26783	AMD	01/28/2004	2003-23/28
R414-54	Speech-Language Pathology Services	26803	AMD	01/28/2004	2003-24/14
R414-58	Children's Organ Transplants	26935	5YR	02/03/2004	Not Printed
R414-300	Primary Care Network, Covered-at-Work Demonstration Waiver	26811	NEW	02/10/2004	2003-24/17
R414-304	Income and Budgeting	26781	AMD	01/01/2004	2003-23/29
R414-310	Medicaid Primary Care Network Demonstration Waiver	26810	AMD	02/10/2004	2003-24/18
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-13	Emergency Medical Services Provider Designations	26669	AMD	01/01/2004	2003-20/7
R426-14	Ambulance Service and Paramedic Service Licensure	26670	AMD	01/01/2004	2003-20/10
R426-15	Licensed and Designated Provider Operations	26671	AMD	01/01/2004	2003-20/14
<u>Health Systems Improvement, Licensing</u>					
R432-1	General Health Care Facility Rules	26868	5YR	01/05/2004	2004-3/45
R432-2	General Licensing Provisions	26876	5YR	01/05/2004	2004-3/46
R432-3	General Health Care Facility Rules Inspection and Enforcement	26875	5YR	01/05/2004	2004-3/46
R432-4	General Construction	26869	5YR	01/05/2004	2004-3/47
R432-5	Nursing Facility Construction	26877	5YR	01/05/2004	2004-3/48
R432-6	Assisted Living Facility General Construction	26886	5YR	01/08/2004	2004-3/48
R432-100-16	Emergency Care Services	26755	AMD	01/09/2004	2003-22/24
Human Services					
<u>Administration</u>					
R495-879	Parental Support for Children in Care	26822	AMD	01/26/2004	2003-24/27
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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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<u>administrative procedures</u>					
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<u>air pollution</u>					
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	26692	R156-56-707	AMD	01/01/2004	2003-21/34
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	26670	R426-14	AMD	01/01/2004	2003-20/10
	26671	R426-15	AMD	01/01/2004	2003-20/14
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<u>health facilities</u> Health, Health Systems Improvement, Licensing	26869	R432-4	5YR	01/05/2004	2004-3/47
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	26834	R156-38	AMD	02/03/2004	2004-1/5
	26915	R156-39a	5YR	01/27/2004	2004-4/76
	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
	26693	R156-56	AMD	01/01/2004	2003-21/7
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
	26927	R156-74	5YR	02/02/2004	2004-4/76
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<u>liens</u> Commerce, Occupational and Professional Licensing	26834	R156-38	AMD	02/03/2004	2004-1/5
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<u>MACT</u> Environmental Quality, Air Quality	26939	R307-214	5YR	02/09/2004	Not Printed
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	26802	R414-50	AMD	01/28/2004	2003-24/13
	26782	R414-51	AMD	01/28/2004	2003-23/25
	26798	R414-52	AMD	01/01/2004	2003-23/27
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<u>orthodontia</u> Health, Health Care Financing, Coverage and Reimbursement Policy	26782	R414-51	AMD	01/28/2004	2003-23/25
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<u>professional geologists</u> Commerce, Occupational and Professional Licensing	26777	R156-76-102	AMD	01/20/2004	2003-23/14
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	26850	R277-462	AMD	02/05/2004	2004-1/16
	26870	R277-735	5YR	01/05/2004	2004-3/44
<u>public funds</u> Money Management Council, Administration	26676	R628-19	NEW	02/10/2004	2003-20/27
	26676	R628-19	CPR	02/10/2004	2004-1/38
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<u>radiology practical technicians</u> Commerce, Occupational and Professional Licensing	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
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<u>residential mortgage loan origination</u> Commerce, Real Estate	26837	R162-202	AMD	02/03/2004	2004-1/10
	26840	R162-206	NEW	02/03/2004	2004-1/12
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