UTAH STATE BULLETIN

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

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

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.utah.gov/

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

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EDITOR'S NOTES

NOTICE OF CORRECTIONS TO EXECUTIVE DOCUMENTS PUBLISHED IN THE UTAH STATE BULLETIN FROM 1993 THROUGH 2004

For many years, the Division of Administrative Rules (Division) has published a selection of Governor's executive documents in the *Utah State Bulletin*. This service has been provided as a convenience to the public. The official copies of these documents are maintained either in the Governor's office or at the Utah State Archives.

The Division discovered that the processes used to prepare the Governor's executive documents for publication had introduced some errors. In the vast majority of instances, these errors did not affect the substance of document. However, there were a few cases in which substantive errors were made.

During the summer of 2004, the Division reviewed the Governor's executive documents issued from 1993 through 2004 and compared them to the version published in the Utah State Bulletin. Documents for this period that contained errors have been corrected and are available from the Division's web site at http://www.rules.utah.gov/info/govexord.htm .

Following is a list of the documents published in the Utah State Bulletin that contained substantive errors that have now been corrected in the online version:

Executive Order, issued 9/30/2001, Declaring a State of Emergency Because of Fire Danger (published 10/15/2001);
Executive Order, issued 6/1/2001, Declaring a State of Emergency Because of Fire Danger (published 6/15/2001);
Executive Order, issued 1/9/2001, Delegating Authority as a Member of the State Bonding Commission (published 2/1/2001);
Executive Order, issued 9/10/1999, Declaring a State of Emergency Because of Fire Danger (published 10/1/1999);
Proclamation, issued 8/12/1999, Constituting Provo City as a City of the First Class (published 9/15/1999);
Proclamation, issued 8/12/1999, Constituting Sandy City as a City of the First Class (published 9/15/1999);
Executive Order, issued 6/15/1999, Declaring a State of Emergency Because of Fire Danger (published 7/1/1999);
Executive Order, issued 4/15/1997, Creating a Task Force to Oppose Nuclear Waste Siting (published 5/1/1997);
Executive Order, issued 5/24/1996, Creating the Utah Open Lands Committee (published 6/15/1996); and
Executive Order, issued 5/19/1995, Requiring Utah State Government Participation in the Certified Public Manager Training Program (published 6/1/1995)

Please note: the processing errors only affected Governor's executive documents published in the Utah State Bulletin. Administrative rule filings were not affected. The Division regrets any inconvenience these publication errors may have created.

Questions regarding this notice should be directed to Kenneth A. Hansen, Director, Division of Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114; or by phone at 801-538-3764, by FAX at 801-538-1773, or by E-mail at rulesonline@utah.gov/.

End of the Editor's Notes Section

SPECIAL NOTICES

Agriculture and Food
Administration

Public Hearing on Proposed Fees for the Registration of Weights and Measures Devices

The Department of Agriculture and Food, Division of Regulatory Services will hold a public hearing on Wednesday, October 27, 2004, at 1:00 p.m. in the main conference room of the Department of Agriculture and Food at 350 N Redwood Road, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on proposed fees to be assessed for the registration of weights and measures devices used for commercial purposes. The proposed new rule involving these fees is Rule R70-960 which was published in the October 1, 2004, issue of the Utah State Bulletin under DAR No. 27424. The fee schedule will be distributed at the October 27 hearing and can be found on the web at: http://www.ag.utah.gov/regsvcs/registration.html/.

Questions regarding this hearing can be directed to: Chris Crnich by phone at 801-538-7150, by FAX at 801-538-4949, or by E-mail at ccrnich@utah.gov; or Marolyn Leetham by phone at 801-538-7114, by FAX at 801-538-7126, or by E-mail at mleetham@utah.gov; or Brett Gurney by phone at 801-538-7158, by FAX at 801-538-7126, or by E-mail: bgurney@utah.gov/.

Governor's Proclamation: Calling the Fifty-Fifth Legislature into a Twelfth Extraordinary Session (Senate Only)

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

WHEREAS, since the close of the 2004 General Session of the 55th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, OLENE S. WALKER, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 55th Legislature of the State of Utah into a Twelfth Extraordinary Session at the Senate Chambers, State Capitol Complex in Salt Lake City, Utah, on the 20th day of October, 2004, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2004 General Session of the 55th Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol Complex in Salt Lake City, Utah, this 6th day of October, 2004.

(State Seal)

Olene S. Walker
Governor

Gayle F. McKeachnie
Lieutenant Governor

Governor's Executive Order 2004-0009: Creating the Utah Commemorative Quarter Dollar Coin Commission

EXECUTIVE ORDER

Creating the Utah Commemorative Quarter Dollar Coin Commission

WHEREAS, in 1997 the United States Congress enacted Public Law 105-124, known as the 50 States Commemorative Coin Program Act (the "Act");

WHEREAS, the Act provides for issuance of a commemorative quarter dollar coin for each of the 50 states during a 10-year period, with five coins being issued each year;

WHEREAS, the Utah quarter dollar coin is scheduled to be issued in October 2007;

WHEREAS, the design for the Utah quarter dollar coin will be selected by the Secretary of the United States Department of the Treasury in consultation with the governor and in accordance with guidelines adopted by the United States Mint;

WHEREAS, the United States Mint has invited the state to submit between three and five narrative recommendations for design of the Utah quarter dollar coin;

WHEREAS, it is desirable that each citizen of the state of Utah have the opportunity to submit a recommendation as to the design of the Utah commemorative quarter dollar coin;

WHEREAS, it is necessary and desirable to establish a commission to assist in facilitating public input regarding the design of the Utah quarter;

WHEREAS, one purpose of the Act is "to promote the diffusion of knowledge among the youth of the United States about the individual states, their history, geography, and the rich diversity of their national heritage"; and

WHEREAS, the Superintendent of Public Instruction of the State Office of Education is willing and desirous of participating on such commission along with other appointed state officials;

NOW, THEREFORE, I, Olene S. Walker, Governor of the state of Utah, by virtue of the authority vested in me by the laws and constitution of the state of Utah, hereby order the following:

1. There is created the Utah Quarter Dollar Commemorative Coin Commission.

2. The Commission shall have three members and shall be comprised of the Director of the Utah Arts Council, the Director of the Division of State History, and the Superintendent of Public Instruction of the Office of Education, or her designee.

3. The Commission shall:

a. Develop an orderly process that complies with the requirements and guidelines of the United States Mint and that allows any Utahn to submit a narrative recommendation for design of the Utah quarter to the Commission.

b. Establish a format and deadline for submission of recommendations to the Commission.

c. Publicize the process and invite participation through news releases, public service announcements, and other reasonable methods.

d. Establish a website with information and requirements for submission of recommendations.

e. Encourage recommendations that are forward-looking as well as those that are historical.

f. Organize recommendations received by category or subject matter, group duplicate recommendations, and make the recommendations available for public review. The Commission may disregard any recommendations that do not comply with the requirements and guidelines.

g. Between January 3 and January 31, 2005, coordinate with the governor regarding the process, method and timing for selection of the 3-5 narrative design recommendations that will be submitted to the U. S. Mint.

h. Submit the selected recommendations to the U. S. Mint no later than July 2, 2005, or such other time as the U. S. Mint directs.

I. After receiving concept drawings from the U. S. Mint, issue a press release that includes copies of the drawings.

j. Assist the governor in selection of the final design and submission to the U. S. Mint prior to the deadline established by the U. S. Mint.

4. The Director of the Utah Arts Council shall serve as the chair of the Commission. The chair, in consultation with the other members of the Commission, shall plan agendas and hold meetings of the Commission.

5. The Commission shall meet as often as necessary to perform its duties, and shall meet at least quarterly.

6. The Commission shall serve without per diem or expenses.

7. Terms of Commission members shall correspond to their terms of service in the state employment positions listed above.

8. A majority of the Commission constitutes a quorum for meeting and voting purposes.

9. The agencies and offices represented on the Commission may provide staff support within existing budgets and may request appropriations in future budgets to cover the expenses of the Commission.

10. The Commission may establish committees and working groups of volunteers to assist in the work of the Commission.

11. This order shall remain in effect until thirty days after the Utah quarter dollar coin is issued by the U. S. Mint unless sooner revoked or supplanted by Executive Order.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah this 17th day of September, 2004.

(State Seal)

OLENE S. WALKER
Governor

ATTEST:

GAYLE F. MCKEACHNIE
Lieutenant Governor

2004/0009

Natural Resources
Wildlife Resources

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

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

MATT WARNER RESERVOIR (Uintah County):

Matt Warner Reservoir is closed to fishing until further notice. The Division anticipates that this emergency fishing closure will be rescinded later this fall. The public will be notified accordingly.

The Tri-County Health Department in the Uintah Basin has issued a health advisory restricting the consumption of water by livestock and other animals, and requesting people not to drink or swim in the reservoir. This health advisory is a result of recent cattle deaths associated with a blue-green algae bloom (*Microcystis aeruginosa*) in the reservoir water. According to this health advisory, some strains of *Microcystis sp.* produce toxins that have been reported to result in skin irritation and gastrointestinal discomfort in humans that come in contact with these particular algae blooms.

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

UTAH DIVISION OF WILDLIFE RESOURCES
By: Cindee Jensen, Acting Director

Subscribed and sworn to before me this 16th day of September 2004.
Becky Johnson, Notary Public
My commission expires: April 7, 2007

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 16, 2004, 12:00 a.m., and October 1, 2004, 11:59 p.m. are included in this, the October 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 November 15, 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 February 12, 2005, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27440
FILED: 09/20/2004, 14:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are designed to: 1) make the rule conform with current Utah State Agency for Surplus Property (USASP) practice of charging no fees on the transfer of state-owned information technology equipment to public institutions; 2) to conform with statute by eliminating Utah Correctional Industry's (UCI) role in the transfer of computers to public institutions, and permit the USASP to directly donate computer equipment received as surplus property to schools that have submitted requests for computer equipment directly to USASP; 3) to clarify that federal surplus property auctions are conducted on-line and regulated by the United States General Services Administration; and (4) to make rules regarding the collection of bad debts conform with statutory requirement that bad debts be assigned to the Office of State Debt Collection.

SUMMARY OF THE RULE OR CHANGE: The changes include: 1) removing "donating agency" in the third sentence of Subsection R28-1-3(D); 2) removing all sentences in Subsection R28-1-3(D) that refer to UCI and replace it with "schools that have submitted requests for computer equipment directly to USASP."; 3) adding "primarily" and "on-line" to the last sentence of Subsection R28-1-3(F); 4) eliminating "locally" and "a representative of", and the word "unguaranteed" from the last sentence of Subsection R28-1-7(A) and adding the phrase "that are not guaranteed with a bankcard"; 5) moving the phrase "the USASP shall initiate formal collection procedures" to the beginning of Subsection R28-1-8(A); 6) replacing the phrase "The USASP shall initiate the following procedures to collect a bad debt" in Subsection R28-1-8(B) and replacing it with the phrase "In the event that a check is returned for "insufficient funds," the USASP may"; 7) adding the word "Prohibit", and eliminate the phrase "may not make" and replace with "from making" in Subsection R28-1-8(B)(1); 8) eliminating the phrase "The USASP shall" from Subsection R28-1-8(2), and reformatting Subsection R28-1-8(2) to include Subsections (a) and (b); 9) the former Subsection R28-1-8(B)(3) is renumbered as Subsection R28-1-8(2)(b) and the phrase "the letter shall also state" is eliminated from said subsection; 10) eliminating provisions of Subsection R28-1-8(C) and replace with "Debts for which payments have not been received within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute."; 11) removing the word "above" from Subsection R28-1-9(A) and replace with "in R28-1-5."; and 12) adding the phrase "other acceptable method" to the first sentence of Subsection R28-1-9(B), as well as eliminate "as a vendor" in the last sentence.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-9-801

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget as a result of the amendments. The amendments are designed to make rules conform with current practices and statutes, and do not affect current rates charged by USASP.
❖ LOCAL GOVERNMENTS: Costs or savings to local government are unknown. Public institutions receiving surplus information technology equipment will "save" as a result of low acquisition costs associated with surplus information technology equipment. However, the magnitude of savings will be directly related to the amount of surplus equipment obtained.
❖ OTHER PERSONS: There are no anticipated costs or savings to others as a result of the amendments. The amendments to Section R28-1-8 make the rules conform to statutory provisions regarding the collection of bad debts. The amendment to Section R28-1-9 expands methods by which surplus property can be sold to the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons are unknown. Compliance costs for entities receiving surplus information technology equipment would depend on the quantity received.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact that the amendments may have on businesses is unknown. Providing surplus information technology equipment to public institutions may have an impact on demand for information technology equipment. However, the magnitude of the impact on business resulting from the provision of surplus property to public institutions is unknown. Amendments to Section R28-1-8 regarding the collection of bad debts are made to comply with statutory provisions.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Steve Saltzgiver, Director

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

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

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

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

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

D. State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency. However, a form SP-1 must still be completed and forwarded to the USASP to account for the transfer of the equipment. In such cases, the USASP will not assess a fee[~~ to the donating agency~~]. Similarly, the USASP is authorized to donate computer equipment received as surplus property from agencies to [~~the Utah Correctional Industries (UCI) for refurbishment and upgrade. Subsequent to refurbishing and upgrading, UCI may sale the equipment to public schools. In such cases, the costs associated with refurbishing and upgrading the equipment shall be borne by UCI and subsequent sale to public schools shall be governed by the Department of Corrections.~~]schools that have submitted requests for computer equipment directly to the USASP.

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

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

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

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

R28-1-7. Payment.

A. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and business or personal checks. Personal checks must be guaranteed with a bank[-]card and may not be accepted for amounts exceeding $200. [~~Unguaranteed~~] [~~p~~]Personal checks that are not guaranteed with a bankcard, or 2-party checks shall not be accepted.

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

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

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

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

R28-1-8. Bad Debt Collection.

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

B. [~~The USASP shall initiate the following procedures to collect a bad debt~~]In the event that a check is returned to the USASP is returned for "insufficient fund," the USASP may:

1. Prohibit [~~T~~]the debtor [~~may not make~~]from making any future purchases from the USASP until the debt is paid in full.

2. [~~The USASP shall~~]send a certified letter to the debtor stating that:

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

[~~3.~~](b) [~~The letter shall also state that if~~]If the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

C. [~~The USASP Director or designee may make exceptions to the collection provisions of this rule for good cause. A good cause exception requires a weighing of:~~

~~1. The cost to the state;~~

~~2. The potential liability to the state;~~

~~3. The overall best interest of the state.~~]Debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

R28-1-9. Public Sales of Surplus Property.

A. State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be applicable, as described [~~above~~]in R28-1-5.

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

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

D. The frequency of public auctions, for either State-owned or federal surplus property will be regulated by current law as applicable,

the volume of items held in inventory at the USASP, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

KEY: state property
[~~June 1, 2000~~]2004
Notice of Continuation March 5, 2002
63A-9-801

Agriculture and Food, Regulatory Services
R70-540
Food Establishment Registration

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27453
FILED: 09/28/2004, 15:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is proposed to set forth requirements for the registration of food establishments to protect public health and ensure a safe food supply as mandated in H.B. 283 (2004). (DAR NOTE: H.B. 283 is found at UT L 2004 Ch 358, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule is to provide the procedures to register grocery stores, warehouses, and food processors and any other establishment meeting the definition of a food establishment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-5-9(1)(a)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The department's cost will be approximately $50,000 in clerical, postage, generation of forms, and etc. for the collection of the fees. The anticipated revenue to be generated through this program is $250,000.
❖ LOCAL GOVERNMENTS: There will be no anticipated cost to local government. This rule is established to set the requirements for the registration of food establishments operating in the State of Utah.
❖ OTHER PERSONS: Persons registering food establishments will be required to pay a fee according to one of the four categories that have been established, see costs under Compliance costs for affected persons below.

COMPLIANCE COSTS FOR AFFECTED PERSONS: S.B. 1 (2004) establishes the registration cost: small food establishments, $30; medium food establishments, $90; large food establishments, $160; and super food establishments, $350. If a food establishment fails to register, regulatory action may be taken. (DAR NOTE: S.B. 1 is found at UT L 2004 Ch 256, and was effective 07/01/2004.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: H.B. 283 legislated fees for the registration of food establishments. Fees are assessed based on size, processing areas, and number of employees. Fiscal impact on a business is based on these criteria.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3087, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marolyn Leetham, Chris Crnich, or Becky Shreeve at the above address, by phone at 801-538-7114, 801-538-7150, or 801-538-7149, by FAX at 801-538-7126, 801-538-4949, or 801-538-7126, or by Internet E-mail at mleetham@utah.gov, ccrnich@utah.gov, or bshreeve@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 11/15/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/29/2004 at 1:00 PM, Dept of Agriculture & Food, 350 North Redwood Road, SLC, UT 84116.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.
R70-540. Food Establishment Registration.
R70-540-1. Authority.
Promulgated under authority of Subsection 4-5-9(1)(a).

R70-540-2. Purpose.
The purpose of this rule is to set forth requirements for the registration of food establishments to protect public health and ensure a safe food supply.

R70-540-3. Scope.
(1) This rule provides procedures to register grocery stores, warehouses, and food processors and any other establishment meeting the definition of a food establishment as per Section 4-5-2(8).
(2) This rule:
(a) establishes definitions;
(b) requires an owner or operator of a food establishment to annually register with the department;
(c) categorizes food establishments;
(d) requires an inspection to determine compliance with R70-530 prior to granting a registration for new food establishments;
(e) establishes the requirements for: issuance, denial, conditional denial, revocation, suspension, and reinstatement for food establishments.

R70-540-4. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(a) "Department" means the Utah Department of Agriculture and Food, Division of Regulatory Services, or its representatives.

(b) "Farmer's Market" means a temporary or seasonal event at a specified location with multiple businesses that sell raw agricultural products and packaged processed foods.

(c) "Food processing" means blending, mixing, packaging, acidifying, curing, drying or dehydrating, dry packing, thermal processing, reduced-oxygen packaging, cooking, baking, heating, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, freezing, chilling, or otherwise manufacturing food products.

(d) "Food Processor" means an establishment that uses food processes indicated in R70-540-4(b). Examples include, but are not limited to, scratch bakery, dietary supplement manufacturer, candy factory, bottling plant, cannery, retail meat department, flour mill, ice plant, and low acid food processing establishment.

(e) "Inspection" means an on-site review of a food establishment conducted by the Utah Department of Agriculture and Food to ensure compliance with all applicable laws and rules.

(f) "Letter of Authorization" is a written document from the owner of an inspected food establishment that states that another entity, that is a separate business, is using their food establishment to process a food product. This letter of authorization is valid for one calendar year. This does not include employees of the food establishment or other businesses subcontracted by the food establishment that may temporarily use their facility for food processing activities.

(g) "Warehouse" means a business whose primary purpose is to store or hold food.

R70-540-5. Registration Categories.

(1) Each food establishment shall belong to only one of the four categories that have been established.

(2) A food establishment with multiple processing areas at the same physical address and under the same ownership will be evaluated and placed in a single category.

(3) A separate registration is required for each business owner operating under a letter of authorization.

(4) Grocery stores offering food as defined in Section 4-5-2(6) to consumers shall be categorized based on the following schedule:

TABLE I

	Inspectable Square Footage	Process Areas/Employees	Category
(a)	less than 1000	4 or fewer employees	small
(b)	1000-5000	limited food processing	medium
(c)	1000-50,000	2 or fewer food processing areas	large
(d)	greater than 50,000	more than 2 food processing areas	super

(5) Food or beverage manufacturing, processing, or packaging plants shall be categorized based on the following schedule:

TABLE II

	Inspectable Square Footage	Process Areas/Employees	Category
(a)	less than 1000	4 or fewer employees	small
(b)	1000-5000	limited food processing	medium
(c)	1000-20,000	2 or fewer food processing areas	large
(d)	greater than 20,000	more than 2 food processing areas	super

(6) Cold or dry storage warehouses or other types of food storage facilities shall be categorized based on the following schedule:

TABLE III

	Inspectable Square Footage	Category
(a)	Less than 1000	small
(b)	1000-5000	medium
(c)	1000-50,000	large
(d)	greater than 50,000	super

(7) A water vending machine owner or company shall be categorized as follows:

TABLE IV

	Number of Water Vending	Category
(a)	ten or fewer	small
(b)	eleven or more	medium

(c) as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d) when their primary purpose is to vend water.

(8) For mobile vendors, each vehicle or truck that sells prepackaged, potentially hazardous food items shall be categorized as a small.

(9) A temporary or seasonal business at an individual location shall be typed as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

(10) A farmer's market shall be typed as one grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

R70-540-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year for the upcoming calendar and all registrations expire on December 31 of each year.

R70-540-7. Registration.

(1) Registration fees are established according to Section 4-5-9. When the appropriate fee is not paid on or before December 31, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31 will be required to register appropriately. New facilities registering after November 1 will be registered for the remainder of that year and the following calendar year. This does not apply to seasonal food establishments.

(2) Fees paid are nonrefundable.

(3) When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered food establishment.

R70-540-8. Requirements.

(1) The prerequisites for operation are as follows:

(a) a person may not operate a food establishment without a valid registration.

(b) a new registration is required within 60 days when ownership changes.

(c) registration is non-transferable.

(d) the Department may seek administrative or judicial remedies to achieve compliance with the laws and rules if a person fails to have a valid registration to operate a food establishment.

(2) The owner or person-in-charge shall have the registration available for review upon request.

(3) The owner of a food establishment may display the current annual registration.

(4) The applicant should submit an application for a registration at least 30 calendar days before the date planned for opening a new or remodeled food establishment.

(5) The person desiring to operate a food establishment shall submit to the department a written application for a registration on a form provided by the Department.

(6) The qualifications and responsibilities of applicants are as follows:

(a) be an owner or representative of the food establishment;

(b) comply with the requirements of the Utah Food Protection Rule R70-530 and other applicable laws;

(c) agree to allow access to the food establishment during normal business hours as specified under Subsection 4-5-9(5)(a), provide required information; and

(d) pay the applicable registration fees at the time the application is submitted.

(7) The contents of the application shall include:

(a) the name, billing address, business telephone number, and signature of the person applying for the registration;

(b) the name of the food establishment, federal tax identification number, physical location address, billing address, type of establishment (i.e. retail grocery, food processor, or warehouse), number and types of food processes, square footage of the food establishment, and the number of employees;

(c) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(d) a statement signed by the applicant that attests to the accuracy of the information provided in the application and agrees to provide other information as required by the Department.

R70-540-9. Issuance.

(1) New, converted, or remodeled food establishments are required to submit plans as specified in the Utah Food Protection Rule R70-530-10, 10-2; the department shall issue a registration to the applicant after:

(a) a properly completed registration form is submitted;

(b) the required plans, specifications, and information are reviewed and approved; and

(c) a preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with the Utah Food Protection Rule R70-530.

(2) Registration for an existing food establishment will be renewed annually as stated in Subsection 4-5-9(2).

(3) The Department shall issue a registration to a new owner of an existing food establishment after:

(a) a properly completed application is submitted, reviewed, and approved;

(b) an inspection shows that the establishment is in compliance with the Utah Food Protection Rule R70-530 and;

(c) the appropriate fees are paid.

R70-540-10. Conditional Denial of Registration.

(1) If the registration is conditionally denied, the Department shall provide the applicant with a written notification within five business days that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

(2) Upon receipt of the notice of conditional denial, the applicant may:

(a) correct deficiencies and submit a description of the corrective actions; or

(b) submit written information to rebut the deficiencies described in the notice; or

(c) request an informal hearing, no later than ten business days after receipt of the notice.

(3) After receiving a written notification from the applicant stating that the deficiencies cited in the notice of conditional denial no longer exist, the Department shall:

(a) evaluate the applicant's corrective actions and supporting documentation or the written rebuttal;

(b) conduct an on-site re-inspection, if necessary, within three business days after receipt of written notification or correction;

(c) issue the registration when the corrective action or rebuttal is sufficient;

(d) deny the registration when the corrective action or rebuttal is not sufficient; or

(e) issue a written notice of denial to an applicant who fails to respond to the notice of conditional denial.

R70-540-11. Denial of Registration.

(1) If the registration is denied, the Department shall provide the applicant with a written notification that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

R70-540-12. Suspension of Registration.

(1) The Commissioner may suspend a registration:

(a) whenever an inspection of the food establishment reveals that the establishment has critical or repeat violations that remain uncorrected beyond the negotiated period of time.

(b) when there exists in a food establishment an immediate and substantial hazard to public health, unless the hazard is immediately corrected. The Commissioner may temporarily suspend the registration of the food establishment without prior notice, informal hearing, and order the food establishment immediately closed by issuing an order in writing. An immediate and substantial hazard to the public health means any condition, based upon inspection findings or other evidence that:

(i) there is an imminent threat of food-borne illness or disease transmission; or

(ii) there is a hazardous condition including but not limited to critical control points without adequate control measures, contamination from wastewater, or non-potable water supply.

(c) in the event of a natural disaster, the Commissioner has the authority to order an establishment immediately closed if, in the opinion of the Commissioner the establishment cannot operate in a safe and sanitary manner. Conditions for immediate closure can include but are not limited to the following: No water supply, no electric power, flooding, or significant damage to the establishment. The Commissioner shall decide under what conditions the establishment will be allowed to reopen.

(d) whenever an owner or operator of a food establishment denies access to authorized personnel during normal business hours and does not allow them to conduct regulatory activities.

(2) The procedures for suspending the registration are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be suspended;

(i) the Commissioner shall state specific reasons for which the registration is to be suspended; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is suspended for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder no later than ten business days, after receipt of the notice;

(b) the establishment shall be closed and shall remain closed until the registration has been reinstated;

(c) a person whose registration has been suspended may request a re-inspection. Upon receipt of the request, the Department will conduct the inspection within three business days. The registration may be reinstated if the inspection shows the violation(s) that led to the suspension is corrected;

(3) the Department may suspend the operations for one processing area of an establishment without suspending the registration for the entire food establishment if the reason for suspension is isolated to that processing area and does not affect other areas of the establishment.

(4) if a food establishment voluntarily closes due to an immediate and substantial hazard to public health, the food establishment shall notify the Department prior to reopening.

(5) when a third administrative enforcement action is assessed against a registered establishment within any twelve-month period of time, the Department may initiate proceedings to suspend the registration.

(6) the registration shall be suspended and in effect until the conditions no longer exist or the Commissioner affirms, modifies, or rescinds the order as appropriate.

R70-540-13. Revocation.

(1) The Commissioner may revoke a registration whenever:

(a) the Commissioner is unable to conduct inspections in accordance with this chapter due to circumstances within the control of the registration holder or person-in-charge; or

(b) the registration has been suspended more than three times within a twelve-month period.

(2) The procedures for revocation are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be revoked;

(i) the Commissioner shall state specific reasons for which the registration is to be revoked; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is revoked for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder, not later than ten business days after receipt of the notice.

(b) a person whose registration has been revoked may reapply thirty days after the date of revocation. Application fees for a new registration will apply.

KEY: food inspection
2004
4-5-9(1)(a)

Commerce, Occupational and Professional Licensing

R156-50

Private Probation Provider Licensing Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27435
FILED: 09/16/2004, 13:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Private Probation Provider Licensing Board are proposing amendments to further define and clarify what a conflict of interest is for a private probation provider as it relates to the supervision of an offender as stated in Section R156-50-502.

SUMMARY OF THE RULE OR CHANGE: In Section R156-50-103, updated a statute citation. In Section R156-50-502, the following conflicts of interest for a private probation provider as it relates to the supervision of an offender have been added as unprofessional conduct: 1) simultaneously providing mental health therapy services and private probation services to the same offender; 2) simultaneously providing drug, tobacco and/or alcohol rehabilitation services and private probation services to the same offender; and 3) while providing private probation services to an offender, also providing any other service to the offender for which the licensee receives compensation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-50-1, and Subsections 58-1-106(1)(a), 58-1-202(1)(a), 58-50-5(1), and 58-59-9(5)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Division will incur minimal costs, approximately $50, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. Therefore, there is no anticipated cost or savings to local government.
❖ OTHER PERSONS: The proposed amendments may impact licensed private probation providers who have previously misinterpreted the statute and have conflicts of interest with clients, causing them to now change their procedures in performing the standards of probation supervision. For those private probation providers who in the past have been simultaneously providing mental health therapy services, drug, tobacco and/or alcohol rehabilitation services, or other services for which the licensee receives compensation and private probation services to the offender, the proposed amendments may mean a loss of revenue in the thousands of dollars.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments may impact licensed private probation providers who have previously misinterpreted the statute and have conflicts of interest with clients, causing them to now change their procedures in performing the standards of probation supervision. For those private probation providers who in the past have been simultaneously providing mental health therapy services, drug, tobacco and/or alcohol rehabilitation services, or other services for which the licensee receives compensation and private probation services to the offender, the proposed amendments may mean a loss of revenue in the thousands of dollars.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Other than the fiscal impact to the regulated industry as mentioned above, there appears to be no fiscal impact to other businesses as a result of this rule filing which further clarifies a licensee's duty to disclose conflicts of interest. Klarice A. Bachman, Executive Director

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/15/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/26/2004 at 9:00 AM, Heber M Wells Bld, 160 E 300 S, North Conference Room (First Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-50. Private Probation Provider Licensing Act Rules.
R156-50-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 50.

R156-50-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) failing to comply with the continuing professional education requirement of Section R156-50-304;

(2) failing to comply with the operating standards required for a presentence report;

(3) failing to properly supervise the offender as set forth in the probation agreement;

(4) failing to disclose any conflict of interest relating to supervision of an offender as set forth in Subsection 58-50-2(5), including, but not limited to the following circumstances:

(a) simultaneously providing mental health therapy services and private probation services to the same offender;

(b) simultaneously providing drug, tobacco and/or alcohol rehabilitation services and private probation services to the same offender; or

(c) while providing private probation services to an offender, also providing any other service to the offender for which the licensee receives compensation;

(5) accepting any amount of money or gratuity from an offender other than that fee which is set forth in the probation agreement; or

(6) failing to report any violation of the probation agreement.

KEY: licensing, probation, private probation provider[~~*~~]
[~~March 18, 1999~~]2004
Notice of Continuation April 26, 2001
58-50-1
58-1-106(1)(a)
58-1-202(1)(a)
58-50-5(1)
58-50-9(5)[
~~58-1-202(1)~~]

Governor, Planning and Budget, Chief Information Officer

R365-11

Network Filtering Requirements for Executive Branch Agencies

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27462
FILED: 10/01/2004, 07:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Network Security, risk of harassment, resource utilization, and employee productivity are all affected by the access and transfer of inappropriate electronic material. This proposed new rule provides limitations for access by Executive Branch Agencies.

SUMMARY OF THE RULE OR CHANGE: This new rule implements filtering policies into rule for management of network access to inappropriate material over electronic networks.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63D-1a-305

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No anticipated impact--This function is currently performed within the Division of Information Technology Services (ITS). This rule formalizes the process.
❖ LOCAL GOVERNMENTS: No impact--Local government is not affected by this rule.
❖ OTHER PERSONS: None--This rule is for Executive Branch agencies only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--All current network activity is via the division of ITS. They have the tools and resources in place to accommodate this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Implementation of filtering for networks will have a positive net fiscal impact by reducing inappropriate traffic on state networks.

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

GOVERNOR
PLANNING AND BUDGET,
CHIEF INFORMATION OFFICER
Room 116 STATE CAPITOL
350 N STATE ST
SALT LAKE CITY UT 84114-1103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Randy Hughes at the above address, by phone at 801-537-9071, by FAX at 801-538-1547, or by Internet E-mail at randyhughes@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 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Val Oveson, Chief Information Officer

R365. Governor, Planning and Budget, Chief Information Officer.
R365-11. Network Filtering Requirements for Executive Branch Agencies.
R365-11-1. Purpose.

The purpose of this rule is to define limitations of access to "inappropriate material" in concurrence with R365-7 Acceptable Use of Information Technology Resources.

Network Security, risk of harassment, resource utilization, and employee productivity are all affected by the access and transfer of inappropriate electronic material. This rule requires that network providers to the Executive Branch implement filtering at levels prescribed by the CIO for the benefit and protection of the Executive Branch as required by the Acceptable Use of Information Technology Resources Rule (R365-7).

R365-11-2. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63D-1a-305 of the Information Technology Act, and Section 63-46a-3 of the Utah Rulemaking Act, Utah Code.

R365-11-3. Definitions.

(1) "Inappropriate material" means any content to which access would be inappropriate in the course of conduct of typical state business. Examples of Internet sites that fall under this definition may include, but are not limited to, those that promote the use of alcohol, tobacco, gambling, illicit drug use and illegal activities; violence and violent extremist views including acts of extreme cruelty against animals or persons; full or partial nudity, and graphic sex.

(2) "Network" means any electronic method for communicating information within agencies, between agencies, and between agencies and external entities where such communication may allow access to inappropriate material.

(3) "Network Filtering Criteria" means the categories of inappropriate material which shall be blocked from electronic access.

R365-11-4. Scope of Application.

(1) All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education, the Board of Regents, and institutions of higher education, are included within the scope of this rule.

(2) This rule provides requirements for denying or limiting state agencies from access to inappropriate material over electronic networks.

R365-11-5. Responsibilities and Authorities.

(1) The CIO shall review and approve network filtering criteria.

(a) The CIO may direct the IT council, network service providers, the State Chief Information Security Officer, or others, to establish review teams as needed to determine appropriate network filtering criteria.

(2) Executive Branch agencies shall ensure that access to networks by employees utilize CIO approved filtering.

(a) Executive Branch agencies shall provide contract information to the CIO for private network providers utilized by the agency as defined in 63a-6-106 of Utah Code.

(3) Executive Branch agency contracts with network providers shall include provisions to support this rule.

(a) Provide network filtering and processes to meet the requirements of this rule.

(b) Provide discretionary filtering as required by individual departments beyond the minimum filtering requirements established by this rule.

(c) Provide a means to remove legitimate sites from filtering criteria or to unblock content as required through exception to this rule.

(d) Changes in filtering criteria shall be implemented within 30 working days of CIO notification to a network provider or Executive Branch Agency.

(e) Implementation of filtering criteria changes shall be communicated by the network provider to executive branch agency personnel, including but not limited to, the most Senior IT Manager and the Executive Director or their designee, a minimum of 10 working days prior to implementation.

(4) Existing contracts with network providers shall be brought into compliance at the earliest opportunity allowed within the current contract, or at contract renewal, whichever occurs first.

R365-11-6. Exceptions.

(1) Agency Executive Director, or the most senior executive of an Executive Branch Agency, may request an exception for filtering through the CIO via written communication.

R365-11-7. Rule Compliance Management.

A state executive branch agency's executive director, or designee, upon becoming aware of a violation, shall institute measures designed to enforce this rule. The CIO may, where appropriate, monitor compliance and report to an agency's executive director any findings or violations of this rule.

KEY: filtering inappropriate material, networks
2004
63D-1a-305

▼ ▼

Human Services, Recovery Services
R527-201
Medical Support Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27434
FILED: 09/16/2004, 11:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Medical support services are provided to all IV-A and Non-IV-A applicants in accordance with 45 CFR 303.30, 303.31, and 303.32 as stated in Section R527-201-1 of the rule. The Office of Recovery Services/Child Support Services (ORS/CSS) will no longer stop automated insurance enforcement against the non-custodial parent when/if the applicant/custodial parent has insurance.

SUMMARY OF THE RULE OR CHANGE: This change deletes Section R527-201-4, "Medical Support Services in Non-IV-A Cases" which is no longer needed since ORS/CSS will enforce medical insurance as ordered; and renumbers the remaining sections.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-1 et seq., 62A-11-326.1, 62A-11-326.2, 62A-11-326.3, and 78-45-7.15; and Subsections 62A-11-406(9) and 35A-7-105(2)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no change in cost or savings as the ORS currently enforces medical insurance for the children.

❖ LOCAL GOVERNMENTS: None--Administrative rules of ORS do not apply to local governments, therefore there are no costs or savings.

❖ OTHER PERSONS: The cost of the children's portion of the premiums is split 50/50 between the parents. If the unobligated parent has been providing medical insurance and the obligated parent begins providing coverage, both the obligated parent and the unobligated parent may experience a savings if the cost of the obligated parent's insurance is lower. However, the reverse would be true if the cost of the obligated parent's insurance is higher.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost of the children's portion of the premiums is split 50/50 between the parents, regardless of which parent obtains coverage, so cost is not the major issue unless there is a large difference in the cost of insurance between the two parents. If the support order requires the Non Custodial Parent (NCP) to carry insurance but the Custodial Parent (CP) has been providing it, the state's federally-required automated system--Office of Recovery Services Information System (ORSIS)--must send the National Medical Support Notice (NMSN) to the NCP's employer. If the parents do not wish this to occur, they can stipulate to a modification of the support order to make the parent who currently carries insurance the obligated parent, or better, to make them both obligated on an "either/or" basis so regardless of which parent obtains insurance in the future the coverage will be consistent with the order.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The costs associated with implementing the NMSN have already been incurred by employers in this state and nationwide, because existing federally-required automation has already sent notices to employers in most cases. The change in wording will conform the rule to an enhancement in ORSIS that will take effect at

the end of September 2004, so in the few remaining cases in which obligated parents have not yet complied with the terms of their support orders, they will be required to do so (unless they wish to stipulate to modify their orders).

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8509, or by Internet E-mail at lwilber@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 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-1. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30 and 303.31 (2000), and 45 CFR 303.32 which are incorporated by reference in this rule.

R527-201-2. Definition.

1. The National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

R527-201-3. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

~~**[R527-201-4. Medical Support Services in Non-IV-A Cases.**~~

~~Medical Support Services shall be provided in conjunction with child support services to applicants who are not receiving Medicaid unless the applicant notifies ORS/CSS that the children are already covered under a health insurance plan and provides ORS/CSS with the insurance information.~~

]R527-201-4[~~5~~]. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-5[~~6~~]. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to determine whether either parent should be ordered to purchase and maintain appropriate medical insurance for the children. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

R527-201-6[~~7~~]. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-7[~~8~~]. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet gives credit of a specific amount for the children's portion of the premium and the amount of the premium decreases, ORS/CSS may reduce the amount of the credit without seeking a modification of the order.

2. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

3. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-8[~~9~~]. Establishing Costs for Pregnancy and Confinement.

1. When establishing a judgment for medical costs for pregnancy and confinement in IV-A and Non-IV-A Medicaid paternity and separation cases, ORS/CSS shall research the exact pregnancy and confinement costs which have accumulated to date.

2. When establishing a judgment for medical costs for pregnancy and confinement in Non-IV-A Non-Medicaid Cases, ORS/CSS shall consult with the mother to determine the amount of the uninsured pregnancy and confinement expenses.

3. When establishing any judgment for medical costs for pregnancy and confinement, one half of the uninsured pregnancy and confinement costs shall be charged to the non-custodial parent.

R527-201-9[~~10~~]. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain employer-based medical insurance and insurance is available at a reasonable cost according to R527-201-7 through an employment-related group health plan, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall promptly notify ORS/CSS when the obligated parent's employment is terminated.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-11[~~10~~]. Obligated Parent Receiving Medicaid.

1. If an obligated parent is receiving Medicaid or was receiving Medicaid at the time the medical debt was incurred, ORS/CSS shall not enforce payment of the medical debt regardless of medical support provisions in the order.

2. In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid
[~~March 5, 2003~~]2004
Notice of Continuation January 30, 2002
63-46b-1 et seq.
62A-11-326.1
62A-11-326.2
62A-11-326.3
62A-11-406(9)
78-45-7.15
35A-7-105(2)

Natural Resources; Oil, Gas and Mining; Non-Coal

R647-1

Minerals Regulatory Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27454
FILED: 09/30/2004, 08:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify definitions and references in the minerals regulatory program.

SUMMARY OF THE RULE OR CHANGE: The changes clarify how definitions apply to mining and exploration operations that are less than five acres in size.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-1 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be an insignificant increase in administrative costs to the state budget. This would occur initially but as operators comply with the bonding

requirements, it will prevent future mine closures without bonds and thus prevent future costs to the state.

❖ LOCAL GOVERNMENTS: Since local government rarely engages in mining operations, there will be little or no impact on these governmental entities.

❖ OTHER PERSONS: Other persons, such as bond issuing companies, may gain profit from issuing additional bonds to mining companies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance cost increases to mining companies may be experienced because of the additional bonding requirements. The actual costs are approximately 1% of the amount of the reclamation cost estimate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While these rule changes could impose a financial burden on business, they provide a "safety net" that assures that the state is not left with unreclaimed mined lands.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/16/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/27/2004 at 10:00 AM, Natural Resources Bldg, 1594 W North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/17/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-1. Minerals Regulatory Program.
R647-1-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the above effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to this[~~e~~] effective date of these rules.

1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities, Compliance with other Local, State and Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Department of Environmental Quality, the Utah Division of State History, the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R647-1-106. Definitions.

"Act" means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. (Section 40-8-1, et seq., UCA).

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63, Chapter 46b, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

"Agency" means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

"Amendment" is an insignificant change in the approved notice of intention.

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto, that is determined to be complete and contains a mining and reclamation plan which has been approved by the Division. A[~~n approved~~] notice of intention for exploration having a disturbed area of five acres or less, or a small mining operation, must be determined complete in writing by the Division, but does not require an approved mining and reclamation plan[~~is not required for exploration having a disturbed area of five or less surface acres, or for small mining operations~~].

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a Hearing Examiner for its hearings in accordance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R647-5.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Gravel" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 2mm and 10mm, which has been deposited by sedimentary processes.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; or reconnaissance activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, that provides the complete information required for authorization to conduct mining operations, and includes[~~including~~] any amendments or revisions thereto.

"Off-site" means the land areas that are outside of or beyond the on-site land.

"On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Permit" means a notice to conduct mining operations issued by the Division. A notice to conduct mining operations is issued by the

Division when either a notice of intention for a small mining operation or exploration is determined to be complete and includes a surety approved by the Division, or a notice of intention for a large mining operation or exploration with a plan of operations and surety approved by the Division.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R647-5. If fairness to the parties is not compromised, an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of on-site surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Rock Aggregate" means those consolidated rock materials associated with a sand deposit, a gravel deposit, or a sand and gravel deposit, that were created by alluvial sedimentary processes. The definition of rock aggregate specifically excludes any solid rock in the form of bedrock which is exposed at the surface of the earth or overlain by unconsolidated material.

"Sand" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 1/16mm to 2mm, which has been deposited by sedimentary processes.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip, or auger mining; dredging; quarrying; leaching; surface evaporation operations; reworking abandoned dumps and tailings and activities related thereto.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

KEY: minerals reclamation
[~~June 1,~~] 2004
Notice of Continuation July 8, 2003
40-8-1 et seq.

Natural Resources; Oil, Gas and Mining; Non-Coal
R647-2
Exploration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27455
FILED: 09/30/2004, 08:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to establish the procedural requirements for bonding exploration operations granted by S.B. 65, from the 2003 Legislature. (DAR NOTE: S.B. 65 is found at UT L 2003 Ch 35, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: This rule change tells how bonds for the reclamation of exploration operations are to be estimated, submitted to the division, reviewed, changed, and forfeited.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-1 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There may be an insignificant increase in administrative costs to the state budget. This would occur initially but as operators comply with the bonding requirements it will prevent future mine closures without bonds and thus prevent future costs to the state.
❖ LOCAL GOVERNMENTS: Since local government rarely engages in mining operations, there will be little or no impact on these governmental entities.
❖ OTHER PERSONS: Other persons, such as bond issuing companies, may gain profit from issuing additional bonds to mining companies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance cost increases to mining companies may be experienced because of the additional bonding requirements. The actual costs are approximately 1% of the amount of the reclamation cost estimate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While these rule changes could impose a financial burden on business, they provide a "safety net" that assures that the state is not left with unreclaimed mined lands.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/16/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/27/2004 at 10:00 AM, Natural Resources Bldg, 1594 W North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/17/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-2. Exploration.
R647-2-101. Filing Requirements and Review Procedures.

1. A complete Notice of Intention to Conduct Exploration (FORM MR-EXP) or [~~a letter~~]comparable application containing all the required information must be filed and the form and amount of reclamation surety approved by[~~with~~] the Division before exploration begins. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable application[~~letter~~], the Division will review the proposal and notify the operator in writing that the notice of intention is:

2.11. [~~That the notice of intention is complete~~]Complete, and all required information has been submitted and approved; or

2.12. [~~That the notice of intention is incomplete~~]Incomplete, and [~~that~~]additional information as identified by the Division will be required[~~.~~

~~2.13.~~] The Division will review any subsequent filings of information within 10 working days of receipt.

3. If more than five acres of disturbance are planned, then a detailed exploration development and reclamation plan must be included in the notice of intention and approved by the Division.[~~A notice of intention to conduct exploration will not require Division approval, unless more than five surface acres of disturbance is proposed. However, all of the required information must be provided to the Division. Division approval is required for all variances from Rule R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.~~]

4. The Division will review and approve or disapprove:

4.11. The form and amount of reclamation surety, and;

4.12. Any variances requested under R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.[~~Exploration that will disturb more than five surface acres at any given time will require Division approval and a reclamation surety before exploration begins. (See Rule R647-2-111.)~~]

5. Developmental drilling conducted within [~~the~~]an already approved and bonded disturbed area [~~of an approved large mining operation or within the five acre disturbed area of a small mining operation~~]does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable [~~letter~~]application.

6. A permittee's retention of a notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

6.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for Exploration.

6.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

6.13. A permittee may avoid payment of the fee by complying with the following requirements:

6.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

6.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.

R647-2-102. Duration of the Notice of Intention.

1. A complete Notice of Intention to Conduct Exploration or comparable [~~letter~~] shall be valid until November 30th of the year following the year of submittal. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention, must notify the Division in writing, prior to expiration of the notice of intention, specifying the reasons an extension is required, and the anticipated length of time required to complete exploration and reclamation.

2. The Division will review and approve the extension and require or adjust the amount of reclamation surety.

3. Failure by the operator to pay permit fees required by [~~R647-2-101(6)~~]R647-2-101.6, or to maintain and update reclamation surety as required will automatically suspend an operator's authorization to conduct exploration operations.

R647-2-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for exploration.

2. The name and permanent mailing address of the surface land owner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, federal or state leases or permits included in the land affected.

4. A statement that the operator will conduct reclamation as required by these rules.

R647-2-105. Maps and Drawings.

[~~A topographic base map showing the location of the proposed exploration project must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot~~

~~and label any previously disturbed areas in the immediate vicinity of the proposed exploration project for which the operator is not responsible.~~]The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operations details.

1. The general location map shall be a USGS 7.5-minute series map or equivalent (1"=2000') and identify new or existing access roads.

2. The operations map (1"=200') shall identify:

2.11. The area to be disturbed;

2.12. The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned exploration activities; and

2.13. Any adjacent previous disturbance for which the operator is not responsible.

R647-2-106. Project Description.

The notice of intention should include the following information:

1. A statement giving general details of the type or method of exploration proposed, including the proposed dates during which exploration will be conducted;

2. The type of minerals to be explored for;

3. The general dimensions of all drill holes, including total depth and diameter;

4. The general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances;

5. The width and length of any new roads constructed;

6. An estimate of the total number of surface acres to be disturbed.

7. The amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) extracted, moved, or proposed to be moved during the exploration operation.

R647-2-109. Reclamation Practices.

The operator shall conform to the following practices while conducting reclamation unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. Appropriate disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by exploration, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. [~~the~~]The Division determines that the revegetation work has been satisfactorily completed within practical limits;

14. [~~where~~]Where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether future exploration or mining operations involve a disturbed area of five acres or less.

R647-2-111. Surety.

1. [~~The operator of an exploration project that will result in more than five surface acres being disturbed at any given time must post a reclamation surety prior to commencement of exploration. Disturbed areas which have been reclaimed are not included within the cumulative five acres for purposes of the reclamation surety.~~]After receiving notification that the notice of intention is approved or complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11 Existing exploration operations will not be extended after the effective date of R647-2-111 unless reclamation surety has been posted with the Division as required by this section.

1.12 Failure to furnish and maintain reclamation surety will suspend an operator's authorization to conduct exploration operations and may, after opportunity for notice and hearing, result in a

withdrawal of the approved notice of intention as provided for in Section 40-8-16(2) and (3).

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by [~~the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, or an agency of the federal government~~]other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. [~~site~~]Site-specific calculations reflecting the Division's cost to reclaim the site.

3.12. The Minerals Regulatory Program's average dollars per acre reclamation costs, if comparable to site specific cost estimates for similar operations; and

3.13. An operator's reclamation estimate [~~will be accepted~~]if it is accurate and verifiable.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of [~~the~~]reclamation surety must be approved by the Division. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts.

4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling or regrading has been successfully performed and the residual amount of retained surety is sufficient to insure completion.

[~~6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.~~

]

R647-2-112. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the complete notice of intention, and comply with the requirements of R647-2-107, R647-2-108, or R647-2-109 the Board may, after notice and hearing, order that:

1. [~~reclamation~~]Reclamation be conducted by the Division, and that:

[~~1.~~]2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; [~~or~~]and

[~~2.~~]3. [~~The~~]Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where a reclamation surety or a bond has been filed with [~~the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration or an agency of the federal government~~]governmental agencies, the Board shall notify such agency of the hearing findings and [~~request that the necessary forfeiture action be taken~~]seek forfeiture concurrence as necessary.

3.11 The forfeited surety shall be used only for the reclamation of lands incident to the mining operation, and any residual amount returned.

R647-2-113. Confidential Information.

Information provided in the notice of intention and in the Mineral Exploration Progress Report (FORM MR-EPR) that relates to the location, size, and nature of the mineral deposit, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator.

R647-2-114. Revised Notice.

Minor additions or changes in the location of exploration operations do not require the submittal of a revised notice of intention. A new or revised Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable [~~letter~~]application must be submitted when:

1. The proposed additions or changes will occur outside the originally designated [~~quarter section~~]legal description; or

2. The proposed additions will [~~cause the total unreclaimed surface disturbance to exceed five (5) acres.~~];

2.11. Substantially increase the environmental impacts when compared with the existing impacts as determined by the Division; or

2.12. A request for a variance is made under R647-2-110; or

2.13. A 25 percent increase or decrease in the amount of reclamation surety; or

2.14. A 50 percent increase or decrease in the size of the disturbed area as described in the current notice of intention; or

2.15. As required by R647-2-101.3

R647-2-115. Reports.

On or before December 31st of the year of filing of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable [~~letter~~]application, the operator must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R647-2-116. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in R647-5, shall be applicable to minerals regulatory proceedings.

KEY: minerals reclamation
[~~October 1, 2001~~]2004
Notice of Continuation July 8, 2003
40-8-1 et seq.

Natural Resources; Oil, Gas and Mining; Non-Coal

R647-3

Small Mining Operations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27456
FILED: 09/30/2004, 08:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to establish the procedural requirements for bonding small (less than five acre) mining operations as granted by S.B. 65 from the 2003 Legislature. (DAR NOTE: S.B. 65 is found at UT L 2003 Ch 35, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: This rule change tells how bonds for the reclamation of small mining operations are to be estimated, submitted to the division, reviewed, changed, and forfeited.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-1 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There may be an insignificant increase in administrative costs to the state budget. This would occur initially but as operators comply with the bonding requirements it will prevent future mine closures without bonds and thus prevent future costs to the state.
❖ LOCAL GOVERNMENTS: Since local government rarely engages in mining operations, there will be little or no impact on these governmental entities.
❖ OTHER PERSONS: Other persons, such as bond issuing companies, may gain profit from issuing additional bonds to mining companies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance cost increases to mining companies may be experienced because of the additional bonding requirements. The actual costs are approximately 1% of the amount of the reclamation cost estimate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While these rule changes could impose a financial burden on business, they provide a "safety net" that assures that the state is not left with unreclaimed mined lands.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/16/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/27/2004 at 10:00 AM, Natural Resources Bldg, 1594 W North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/17/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-3. Small Mining Operations.
R647-3-101. Filing Requirements and Review Procedures.

1. A Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) or [~~a letter~~]application containing all the required information must be filed [~~with~~]and the form and amount of reclamation surety approved by the Division before a small mining operation begins. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. [~~that~~]That the notice of intention is complete[~~,~~] and all required information has been submitted; or,

2.12. [~~that~~]That the notice of intention is incomplete, and [~~that~~]additional information as identified by the Division will be required.

[~~3.~~]2.12.111. The Division will review any subsequent filings of information within 10 working days of receipt.

[~~4. A notice of intention to commence small mining operations will not require Division approval. However, all of the required information must be provided to the Division.~~

] 3. The Division will review and approve or disapprove:

3.11. The form and amount of reclamation surety (R647-3-111), and

3.12. All variances requested from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

[~~Division approval is required for all variances from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.~~

~~5. Filing of the complete notice of intention shall enable the operator to conduct small mining operations provided that the operator has paid all permit fees required by R647-3-101(7). A failure to pay permit fees required by R647-3-101(7) will suspend an operator's authorization to conduct small mining operations. The operator is responsible for conducting mining and reclamation activities in compliance with the requirements of the notice of intention, the Act, and these Rules.~~

] [~~6.~~]4. The operator must notify the Division no later than 30 days after beginning small mining operations.

[~~7.~~]5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

[~~7.11.~~]5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for[

~~7.11.11.~~] Small Mining Operations (less than 5 disturbed acres).

[~~7.12.~~]5.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

[~~7.13.~~]6. A permittee may avoid payment of the fee by complying with the following requirements:

[~~7.13.11.~~]6.11 A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

[~~7.13.12.~~]6.12 The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.[

~~7.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.~~]

R647-3-102. Duration of the Notice of Intention.

The notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation. However, failure by the operator to pay permit fees required by [~~R647-3-101(7)~~]R647-3-101.5 or maintain and update adequate reclamation surety as required in R647-3-111 will automatically suspend an operator's authorization to conduct small mining operations.

R647-3-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for the small mining operation and reclamation of the site.

2. The name, and permanent mailing address of the surface landowner(s) and mineral owner(s) of all land to be affected by the mining operation.

3. The federal mining claim number(s), lease number(s) or permit number(s) of all mining claims, federal or state leases or permits included in the land affected.

4. A statement that the operator will conduct reclamation as required by these rules.

R647-3-105. Project Location and Map.

[~~A topographic base map showing the location of the proposed small mining operation must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed small mining operation for which the operator is not responsible.~~]The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operations details.

1. The general location map shall be a USGS 7.5-minute series map or equivalent (1"=2000') and identify new or existing access roads.

2. The operations map (1"=200') shall identify:

2.11. The area to be disturbed;

2.12. The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned exploration activities; and

2.13. Any adjacent previous disturbance for which the operator is not responsible.

R647-3-106. Operation Plan.

The operator shall provide a brief narrative description of the proposed mining operation as part of the notice of intention. The description should include the following information:

1. A statement giving general details of the type or method of mining operations proposed, and the type of minerals to be mined;

2. Estimated width and length of any new roads to be constructed;

3. An estimate of the total number of surface acres to be disturbed by the mining operation.

4. The amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) to be extracted, moved, or proposed to be moved, relating to the mining operation.

R647-3-109. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-3-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and

regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover of the disturbed area is unknown, then the ground cover of an adjacent undisturbed area that is representative of the premining conditions will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits[~~:~~].

14. [~~where~~]Where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether a mining operation is a small mining operation.

R647-3-111. Surety.

1. After receiving notification that the notice of intention is complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11 Existing operations will have 365 days from the effective date of R647-3-111 in which to achieve compliance.

1.12 Failure to furnish and maintain reclamation surety will suspend an operator's authorization to conduct mining operations and may, after opportunity for notice and hearing, result in a withdrawal of the approved notice of intention as provided for in Section 40-8-16(2).

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations reflecting the Division's or third party cost to reclaim the site;

3.12. The Minerals Regulatory Program's average dollars per acre reclamation costs, if comparable to site specific cost estimates for similar operations; and

3.13. An operator's reclamation estimate, if it is accurate and verifiable.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The Division must approve the form and amount of surety. Acceptable forms of surety are described in R647-4-113.4.11 through R647-4-113.4.16.

5. Surety shall be required until such time as the Division deems reclamation complete. The Division will promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling or regrading has been successfully performed and the residual amount of retained surety is sufficient to insure completion.

6. The reclamation surety shall be periodically adjusted to insure that the amount of surety is sufficient to cover all costs of reclamation at any time. Adjustments may be made:

6.11. As required by a revision in the Notice of Intention under R647-3-115,

6.12. As a result of inflation, based upon an acceptable Costs Index; and

6.13 As a result of periodic review by the Division. The Division may specify periodic times or set a schedule for reevaluating and adjusting the reclamation surety amount to fulfill this requirement.

[~~R647-3-111.~~]R647-3-112. Failure to Reclaim.

If the operator of a small mining operation fails or refuses to conduct reclamation as required by the complete notice of intention, and comply with the requirements of and fails or refuses to comply with R647-3-107, R647-3-108, or R647-3-109 [~~the Act and these rules~~], the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division; and

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court[~~.~~]; and

3. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where reclamation surety has been filed with another governmental agency, the Board shall notify such agency of the hearing findings, and seek forfeiture concurrence as necessary.

3.11 The forfeited surety shall be used only for the reclamation of lands incident to the mining operation, and any residual amount returned.

[~~R647-3-112.~~]R647-3-113. Suspension or Termination of Operations.

1. All mine operations are required to be maintained in a safe, clean, and environmentally stable condition. Active and inactive operations must continue to submit annual reports unless waived in writing by the Division.

2. The operator need not notify the Division of the temporary suspension of small mining operations.

3. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the small mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted.

4. The operator shall give the Division prompt written notice of a termination or suspension of small mining operations expected to exceed five (5) years. Upon receipt of notification the Division shall, within 30 days, make an inspection of the property.

5. Small mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a small mining operation to remain in a continued state of suspension. Reclamation of a small mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.

[~~R647-3-113.~~]R647-3-114. Mine Enlargement.

Before enlarging a small mining operation beyond five (5) acres of surface disturbance, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

[~~R647-3-114.~~]R647-3-115. Revisions.

Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs.[~~A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised. Division approval of a revision of small mining operations is not required before the operational change occurs.~~]

1. A revised FORM MR-SMO (or similar form) must be submitted when the proposed change:

1.11. Substantially increases the environmental impacts when compared with the existing impacts as determined by the Division; or

1.12. Results in a request for a variance made under R647-3-110; or

1.13 . Increases or decreases the amount of reclamation surety by 25 percent; or

1.14. Increases or decreases the size of the disturbed area as described in the current notice of intention by 50 percent.

2. The Division shall determine if the revised application is complete and process it as a notice of intention. A revised reclamation surety must be approved before the operational change occurs.

[~~R647-3-115.~~]R647-3-116. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining operation to another party, an application form entitled, Transfer of Notice of Intention - Small Mining Operations (FORM MR-TRS) must be completed and filed with the Division. The new mine operator must post adequate reclamation surety and assume full responsibility for all disturbances of the permitted[~~continued mining operations and reclamation obligations for the small mining~~] operation. The form and amount of surety must be approved by the Division for the transfer to be complete.

[~~R647-3-116.~~]R647-3-117. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

1.11. The location of the operation and the number and date of the applicable Notice of Intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. New surface disturbances created during the year;

1.14. The reclamation work performed during the year.

2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

[~~R647-3-117.~~]R647-3-118. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

[~~R647-3-118.~~]R647-3-119. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

KEY: minerals reclamation
[~~February 26, 1999~~]2004
Notice of Continuation July 8, 2003
40-8-1 et seq.

Natural Resources; Oil, Gas and Mining; Non-Coal

R647-4

Large Mining Operations

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 27457
FILED: 09/30/2004, 08:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is proposed to clarify certain bonding requirements for large mining operations and to codify certain procedures that

were included as policies prior to the passage of S.B. 30 in the 2003 Legislature. (DAR NOTE: S.B. 30 is found at UT L 2003 Ch 197, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: The rule change clarifies certain procedural requirements for estimating, submitting, reviewing, and modifying reclamation bonds for mining operations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-1 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There may be an insignificant increase in administrative costs to the state budget. This would occur initially, but as operators become used to the streamlined procedures there will be a slight savings due to increased efficiency.
❖ LOCAL GOVERNMENTS: Since local government rarely engages in mining operations, there will be little or no impact on these governmental entities.
❖ OTHER PERSONS: Other persons probably will not be affected by this proposed rule change since there is no modification to the existing bonding requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any significant increase in compliance costs since policies guiding these aspects of reclamation bonds for large mining operations previously existed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Business should not be affected by these rule changes since procedures will not be changed drastically from those which existed under previously existing policies.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/16/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/27/2004 at 10:00 AM, Natural Resources Bldg, 1594 W North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/17/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-4. Large Mining Operations.
R647-4-101. Filing Requirements and Review Procedures.

A Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) or [~~a letter~~]comparable application containing all the required information and including the form and amount of reclamation surety must be approved by the Division before mining operations begin.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

5.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.

R647-4-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine. However, the Division may review the permit and require updated information and modifications when warranted. Additionally, failure by the operator to pay permit fees required by R647-4-101(5), or maintain and update reclamation surety as required will automatically suspend an operator's authorization to conduct mining operations and may after notice and hearing result in a withdrawal of the approved notice of intention.

R647-4-105. Maps, Drawings and Photographs.

1. [~~A~~]An accurate topographic base map must be submitted with the notice of intention. The scale should be approximately 1 inch = 2,000 feet, preferably a USGS 7.5 minute series or equivalent topographic map where available. The following information shall be included on the map:

1.11. Property boundaries of surface ownership of all lands which are to be affected by the mining operations;

1.12. Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water wells, oil and gas pipelines, existing wells, boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations;

1.13. Proposed route of access to the mining operations from nearest publicly maintained highway. The map scale will be appropriate to show access.

1.14. Known areas which have been previously impacted by mining or exploration activities within the proposed disturbed area.

2. A surface facilities map shall be provided at a scale of approximately 1" = [~~500~~']200'. The following information shall be included on the surface facilities map:

2.11. Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads, utilities, power lines, proposed drainage control structures, and, the location of topsoil storage areas, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes and wastewater discharge treatment and containment facilities;

2.12. A border clearly outlining the acreage proposed to be disturbed by mining operations.

3. The following maps, drawings or cross sections may be required by the Division:

3.11. Regraded Slopes to be left at steeper than 2h:1v;

3.12. Plans, profiles and cross sections of roads, pads or other earthen structures to be left as part of the postmining land use;

3.13. Water impounding structures with embankments greater than 20 feet in height from the upstream toe of the embankment or greater than 20 acre feet in storage capacity;

3.14. Maps identifying surface areas which will be disturbed by the operator but will not be reclaimed, such as solid rock slopes, cuts, roads, or sites of buildings or surface facilities to be left as part of the postmining land use;

3.15. Sediment ponds, diversion channels, culvert size and locations, and other hydrologic designs and features to be incorporated into the mining and reclamation plan;

3.16. Baseline information maps and drawings including soils, vegetation, watershed(s), geologic formations and structure, contour and other such maps which may be required for determination of existing conditions, operations, reclamation and postmining land use;

3.17. A reclamation activities and treatment map to identify the location and the extent of the reclamation work to be accomplished by the operator upon cessation of mining operations. This drawing shall be utilized to determine adequate [~~bonding~~]reclamation surety and reclamation practices for the site;

3.18. Other maps, plans, or cross sections as may reasonably be required by the Division.

4. The operator may submit photographs (prints) of the site sufficient to show existing vegetation and surface conditions. These photographs should show the general appearance and condition of the land to be affected and should be clearly marked as to the location, orientation and the date that the pictures were taken.

5. Copies of underground and surface mine development maps.

R647-4-106. Operation Plan.

The operator shall provide a narrative description referencing maps or drawings as necessary, of the proposed operations including:

1. Type of mineral(s) to be mined;

2. Type of operations to be conducted, including the mining/processing methods to be used on-site, and the identification of any deleterious or acid forming materials present or to be left on the site as a result of mining or mineral processing;

3. Estimated acreages proposed to be disturbed and/or reclaimed annually or sequentially;

4. A description of the nature of the materials to be mined or processed including waste/overburden materials and the estimated annual tonnages of ore and waste materials to be mined;

5. A description of existing soil types, including the location and extent of topsoil or suitable plant growth material. If no suitable soil material exists, an explanation of the conditions shall be given;

6. A description of the plan for protecting and redepositing existing soils;

7. A description of existing vegetative communities and cover levels, sufficient to establish revegetation success standards in accordance with Rule R647-4-111;

8. Depth to groundwater, extent of overburden material and geologic setting;

9. Proposed location and size of ore and waste stockpiles, tailings facilities and water storage/treatment ponds.

10. Information regarding the amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) extracted, moved or proposed to be moved.

R647-4-110. Reclamation Plan.

Each notice of intention shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation including, but not limited to:

1. A statement of the current land use and the proposed postmining land use for the disturbed area;

2. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, shafts and adits, drill holes, and similar structures will be reclaimed;

3. A detailed description of any surface facilities to be left as part of the postmining land use, including but not limited to buildings, utilities, roads, pads, ponds, pits and surface equipment;

4. A description of the treatment, location and disposition of any deleterious or acid-forming materials generated and left on-site, including a map showing the location of such materials upon the completion of reclamation;

5. A planting program as best calculated to revegetate the disturbed area.

5.11. Plans shall include, at a minimum, grading and/or stabilization procedures, topsoil replacement, seed bed preparation,

seed mixture(s) and rate(s), and timing of seeding (fall seeding is preferred timing);

5.12. Where there is no original protective cover, an alternate practical procedure must be proposed to minimize or control erosion or siltation.

6. A statement that the operator will conduct reclamation as required by these rules.

R647-4-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division. Failure to furnish and maintain reclamation surety will suspend an operator's authorization to conduct mining operations and may, after opportunity for notice and hearing, result in a withdrawal of the approved notice of intention as provided for in Section 40-8-16(2) and (3).

2. The Division will not require a separate surety [~~when~~]where a reclamation surety in a form and amount acceptable to the Division, is held by [~~the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, or an agency of the federal government~~]other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements will be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the final amount of surety required to reclaim the mine site. The surety amount will be based upon (a) the technical details of the approved mining and reclamation plan, (b) the proposed post mining land use, and (c) projected third party engineering and administrative costs to cover Division expenses incurred under a bond forfeiture circumstance. An operator's surety estimate will be accepted if it is accurate and verifiable. The Division may accept surety estimates based upon the Minerals Reclamation Program's average dollars per acre reclamation costs, if comparable to site specific cost estimates for similar operations.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts.

4.16. The Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling or regrading has been successfully performed and the residual amount of retained surety is sufficient to insure completion.

6. [~~Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.~~]The reclamation surety shall be periodically adjusted to insure that the amount of surety is sufficient to cover all costs of reclamation at any time. Adjustments may be made:

6.11. As required by a revision in the Notice of Intention under R647-4-118;

6.12. As a result of inflation based upon an acceptable Costs Index; and

6.13 As a result of periodic review by the Division. The Division may specify periodic times or set a schedule for reevaluating and adjusting the reclamation surety amount to fulfill this requirement.

R647-4-114. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or

2. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with [~~the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration or an agency of the federal government~~]other governmental agencies, the Board shall notify such agency of the hearing findings, and [~~request that the necessary forfeiture action be taken~~]seek forfeiture concurrence as necessary.

R647-4-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations [~~which have a disturbed area of five (5) acres or less may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage~~]are required to submit a Notice of Intention to Revise Large Mining Operations when a significant change

to the original Notice occurs. The Division will consider, when determining a change significant, if the change:

3.11. Substantially increases the environmental impacts when compared with the existing impacts; or

3.12. Results in a request for a variance required by R647-2-112; or

3.13. Increases or decreases the amount of reclamation surety by 25 percent; or

3.14. Increases or decreases the size of the disturbed area as described in the current notice of intention by 50 percent; or

3.15. Is significant to warrant the need for an opportunity for public comment.

R647-4-119. Amendments.

1. An amendment is [~~an insignificant~~]a change to the approved notice of intention determined not to be a revision under R647-4-118.3.[~~The Division will review the change and make the determination of significance on a case-by-case basis.~~]

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

KEY: minerals reclamation
[~~October 1, 2001~~]2004
Notice of Continuation July 8, 2003
40-8-1 et seq.

Natural Resources; Oil, Gas and Mining; Non-Coal

R647-5

Administrative Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27458
FILED: 09/30/2004, 08:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change updates the lists of formal and informal adjudicative procedures available under the Minerals Reclamation Program.

SUMMARY OF THE RULE OR CHANGE: Surety forfeitures are added to the list of formal procedures conducted before the Board, surety releases are added to the list of informal procedures conducted before the Division, and surety form and amount determinations are added to the list of informal procedures to be conducted before the Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-1 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No impact is expected to be experienced as a result of the adoption of this rule because it merely clarifies how certain procedures will be handled in the future.

❖ LOCAL GOVERNMENTS: Since local government rarely engages in mining operations, there is no impact expected for local government.

❖ OTHER PERSONS: Other person who may be impacted by this rule may be legal professionals in the preparation of documents for the formal proceedings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs cannot be determined at this time because the number of contested and other cases is indeterminable. Regardless of number and kind of cases for hearing, there will still be a submittal by an operator followed by agency review.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Business will be affected to a small extent in the early stages of the implementation of this rule because it is a different procedural approach to for certain matters for adjudication. Since it clarifies the forum for different matters, it will ultimately be of assistance to business in the long term.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/16/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/27/2004 at 10:00 AM, Natural Resources Bldg, 1594 W North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/17/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-5. Administrative Procedures.
R647-5-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the "Rules of Practice and

Procedure Before the Board of Oil, Gas and Mining", the R641 rules, include the following: R647-2-112, Failure to Reclaim, Forfeiture of Surety; [~~R647-3-111~~]R647-3-112, Failure to Reclaim, Forfeiture of Surety; [~~R647-3-112.5~~]R647-3-113.5, Over 10-Year Suspension; R647-4-114, Failure to Reclaim, Forfeiture of Surety; R647-4-117.4, Over 10-Year Suspension.

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R647-5 include the following: R647-2-101, Notice of Intent to Commence Mining Operations; R647-2-102, Extension; R647-2-107, Operation Practices; R647-2-108, Unplugged Over 30 Days/Alternative Plan; R647-2-109, Reclamation Practices Variance; R647-2-109.13, Revegetation Approval; R647-2-110, Variance, Revocation or Adjustment of Variance; R647-2-111, Release of Surety; R647-2-114, New or Revised Notice of Intention; R647-3-101, Notice of Intention to Commence Small Mining Operations; R647-3-107, Operation Practices; R647-3-108, Unplugged over 30 Days/Alternate Plan; R647-3-109, Reclamation Practices Variance; R647-3-109.13, Revegetation Approval; R647-3-110, Variance, Revocation, or Adjustment of Variance; R647-3-111, Release of Surety; [~~R647-3-112.1~~]R647-3-113.1, Waiver, Annual Report; [~~R647-3-112.3~~]R647-3-113.3 and [~~R647-3-112.4~~]R647-3-113.4, Termination or Suspension; [~~R647-3-112.5~~]R647-3-113.5, Reevaluations, Reclamation; [~~R647-3-113~~]R647-3-114, Mine Enlargement; [~~R647-3-114~~]R647-3-115, Revisions; [~~R647-3-116~~]R647-3-117, Report Waiver; R647-4-101, Notice of Intention to Commence Large Mining Operation; R647-4-102, Updated Information or Modifications; R647-4-107, Operation Practices; R647-4-108, Unplugged over 30 Days/Alternate Plan; R647-4-111, Reclamation Practice, Variance; R647-4-111.13, Revegetation Approval; R647-4-112, Variances, Revocation or Adjustment; R647-4-113, Release of Surety; R647-4-117.3 and R647-4-117.4, Termination or Suspension; R647-4-118, Revisions; R647-4-119, Amendments; R647-4-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R647-5 include the following:

R647-2-111, Surety, Form and Amount; R647-3-111, Surety, Form and Amount; and R647-4-113, Surety, Form and Amount.

KEY: minerals reclamation
[~~1994~~]2004
Notice of Continuation July 8, 2003
40-8-1 et seq.

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Natural Resources, Parks and Recreation
R651-620
Protection of Resources Park System Property

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27442
FILED: 09/21/2004, 14:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of broken glass being found in some public areas of our state parks, it is the intention of this rule to allow State Park rangers to post areas where glass containers are prohibited. It is not the intention to prohibit glass containers in the parks, but allow the rangers to post such places where broken glass has caused problems, such as the rocks near a boat ramp area. The Division is also adding Section R651-620-6 that adds metal detecting and prohibits that activity in state parks without a permit. Individuals wanting to do metal detecting will get a permit from the park where they want to do metal detecting. This way the park will be able to discern whether or not a permit is needed on federal lands within a state park or historic site.

SUMMARY OF THE RULE OR CHANGE: State Park managers/rangers will post areas where broken glass containers have become a danger to the recreating public. Other areas that are not posted will allow the glass containers. There is a state law that prohibits digging, taking, or removing items from state parks or state lands. Parks receive numerous calls each year from people wanting to do metal detecting activities within the parks. The law is not specific enough that it addresses metal detecting, so if the Division requires a permit for metal detecting it can control the activity within the state parks. Metal detecting will be allowed only with a permit from the park, otherwise, it will be prohibited.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65-11-17

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No monetary exchange or collection is involved with these two changes. These changes provide clarification and add other measures to protect the environment. Therefore there are no anticipated costs or savings to the state budget.

❖ LOCAL GOVERNMENTS: These two changes involve state parks only, therefore there are no anticipated costs or savings to local government.

❖ OTHER PERSONS: If a person is caught doing an activity that is prohibited by this rule, without a proper permit or within a posted area, they could be warned or cited by a ranger or law enforcement personnel.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since one part of this rule was changed and a part was added, there is no measurement yet of how it will affect those people who may violate the rule. It will take some time for us to have statistical information regarding the changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department anticipates no fiscal impacts to businesses from the proposed changes to this rule. One change would only allow Division personnel on duty more flexibility in prohibiting the use of glass containers in certain areas. Glass containers would still be allowed in state parks, and, as a result, demand for products in such containers should not be impacted. The second change would require those interested in using metal detectors, to first

obtain a permit. Like the first proposed change, this requirement would not serve as an outright ban on the use of metal detectors, but would grant Division personnel more flexibility in protecting sensitive areas and meeting state and federal mandates.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Gordon Topham, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-620. Protection of Resources Park System Property.
R651-620-1. Applicability of Criminal Code.

Offenses against capital improvements, natural and cultural resources will normally be handled through the Utah Criminal Code.

R651-620-2. Trespass.

(1) A person may be found guilty of a class B misdemeanor, as stated in Utah Code Annotated, Section 63-11-17.3, if that person engages in activities within a park area without specific written authorization by the division. These activities include: (a) construction, or causing to construct, any structure, including buildings, fences water control devices, roads, utility lines or towers, or any other improvements; (b) removal, extraction, use, consumption, possession or destruction of any natural or cultural resource; (c) grazing of livestock, except as provided in Utah Code Annotated, Section 72-3-112. A cause of action for the trespass of livestock may be initiated in accordance with 78-12-26 (2); (d) use or occupation of park area property for more than 30 days after the cancellation or expiration of permit, lease, or concession agreement; or (e) any use or occupation in violation of division rules.

(2) The provisions of this section do not apply to division employees in the performance of their duties.

(3) Violations described in section (1) are subject to penalties as provided in Utah Code Annotated, Section 76-3-204 and Section 76-3-301.

R651-620-3. Tossing, Throwing, or Rolling of Rocks and other Materials.

The tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains is prohibited.

R651-620-4. Firewood.

Collecting or cutting of firewood is prohibited without a permit.

R651-620-5. Glass Containers.

Use or possession of glass containers [~~on~~]is prohibited in posted areas[~~bathing beaches, adjacent waters and lawn areas is prohibited~~].

R651-620-6. Metal Detecting.

Metal detecting is prohibited without a permit.

KEY: parks, trespass
[~~August 6, 2001~~]November 16, 2004
Notice of Continuation October 23, 2003
63-11-17[~~(2)(b)~~]

▼ ▼

Natural Resources, Wildlife Resources
R657-13
Taking Fish and Crayfish

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27432
FILED: 09/16/2004, 09:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: Section R657-13-5 is being amended to clarify the requirements for fishing on interstate waters (Bear Lake and Lake Powell), and purchasing a reciprocal stamp for fishing at Flaming Gorge. Section R657-13-9 is being amended to provide that Lake Powell is open to taking carp and striped bass by means of underwater spearfishing. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment adds or clarifies existing requirements, therefore, the DWR determines that this amendment will not create any cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

❖ OTHER PERSONS: The amendments are for clarification, therefore, the amendments do not impose any additional

requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments are for clarification. DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Miles Moretti, Acting Director

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-5. Interstate Waters And Reciprocal Fishing Stamps.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Reciprocal Fishing Stamps.

[~~(1) Lake Powell and Flaming Gorge Reservoir:~~

] (a) The purchase of a reciprocal fishing stamp allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing stamps are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).

(c)[~~Any person qualifying as an Arizona resident and having in their possession a valid Arizona resident fishing license and a Utah reciprocal fishing stamp for Lake Powell, is permitted to fish within the Utah boundaries of Lake Powell.~~

~~(d) Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing stamp for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.~~

~~(e)~~] Utah residents may obtain reciprocal fishing stamps by contacting the state of Arizona for Lake Powell[~~,~~] and the state of Wyoming for Flaming Gorge.

[~~(f)~~](d) Nonresidents may obtain reciprocal fishing stamps from division offices and selected license agents.

[~~(g)~~](e) The reciprocal fishing stamp must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state;

(ii) signed across the face by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state; and

(iii) attached to the fishing or combination license from the reciprocating state.

[~~(h)~~](f) Reciprocal fishing stamps are valid on a calendar year basis.

[~~(i)~~](g) Anglers are subject to the laws and rules of the state in which they are fishing.

[~~(j)~~](h) Only one bag limit may be taken and held in possession even if licensed in both states.

[~~(2) Bear Lake~~](3) Lake Powell Reservoir

[~~(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.~~](a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing stamp for Lake Powell can fish within the Utah boundaries of Lake Powell.

[~~(b) Only one bag limit may be taken and held in possession even if licensed in both states.~~](b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Only Utah and Arizona residents are allowed to purchase reciprocal stamps to fish both sides of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing stamp for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while underwater spearfishing.

(3) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Joe's Valley Reservoir, Ken's Lake, Lake Powell, Lost Creek Reservoir, Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, and Willard Bay Reservoir are open to taking game fish by means of underwater spearfishing from June 1 through September 30. These are the only waters open to underwater spearfishing for game fish.

(4) Lake Powell is open to taking carp and striped bass by means of underwater spearfishing from January 1 through December 31.

(5) The bag and possession limit is two game fish. No more than one fish greater than 20 inches may be taken, except at Flaming Gorge Reservoir only one lake trout (mackinaw) greater than 28 inches may be taken.

[~~(5)~~](6) Nongame fish may be taken by underwater spearfishing only in the waters listed in [~~Subsection~~]Subsections (3) and (4) above and as provided in Section R657-13-14.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in

Subsection R657-13-14(1)(c) [~~to take fish or crayfish~~]and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing; however, a gaff may be used to land fish caught by lawful means, except at Flaming Gorge Reservoir and Fish Lake.

(4) Chumming is prohibited[~~, on all waters except Lake Powell where dead anchovies only may be used for taking striped bass.~~] on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);
(b) Bluehead sucker (Catostomus discobolus);
(c) Colorado pikeminnow (Ptychocheilus lucius);
(d) Flannelmouth sucker (Catostomus latipinnis);
(e) Gizzard shad (Dorosoma cepedianum);
(f) Grass carp (Ctenopharyngodon idella);
(g) Humpback chub (Gila cypha);
(h) June sucker (Chasmistes liorus);
(i) Least chub (Iotichthys phlegethontis);
(j) Leatherside chub [~~(Gila~~](Snyderichthys copei);
(k) Razorback sucker (Xyrauchen texanus);
(l) Roundtail chub (Gila robusta);
(m) Virgin River chub (Gila [~~robusta~~]seminuda);
(n) Virgin spinedace (Lepidomeda mollispinis); and
(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;
(ii) Colorado River;
(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);
(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);
(v) White River (Uintah County);
(vi) Duchesne River (from Myton to confluence with Green River);
(vii) Virgin River (Main stem, North, and East Forks).
(viii) Ash Creek;
(ix) Beaver Dam Wash;
(x) Fort Pierce Wash;
(xi) La Verkin Creek;
(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);
(xiii) Diamond Fork;
(xiv) Thistle Creek;
(xv) Main Canyon Creek (tributary to Wallsburg Creek);
(xvi) South Fork of Provo River (below Deer Creek Dam); and
(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by angling, traps, bow and arrow, liftnets, seine, spear or underwater spearfishing in the waters specified in Subsection R657-13-9(3)[~~, angling, traps, bow and arrow, liftnets, or seine~~].

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

KEY: fish, fishing, wildlife, wildlife law
[~~January 2, 2004~~]2005
Notice of Continuation September 20, 2002
23-14-18
23-14-19
23-19-1
23-22-3

Public Safety, Fire Marshal
R710-3
Assisted Living Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27433
FILED: 09/16/2004, 11:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on September 14, 2004, in a regularly scheduled Board meeting and proposed to amend Rule R710-3 to update two incorporated references, to add a new subsection on Residential Treatment Assisted Living Facilities (R710-3-3(3.4), redefine variance request procedures, establish regulations for specialized security, and give an allowance to modify corridor widths in existing Type II facilities.

SUMMARY OF THE RULE OR CHANGE: A summary of the proposed amendments to Rule R710-3 are as follows: 1) in Section R710-3-1, the Board proposes to update two incorporated references; 2) in Section R710-3-2, the Board proposes to add corrective definitions and add the definition to establish Residential Treatment Assisted Living Facility; 3) in Subsections R710-3-3(3.2.9) and R710-3-3(3.3.8), the Board proposes to redefine the allowance for non-ambulatory persons to receive a variance in Type I and Type II Assisted Living Facilities; 4) in Subsection R710-3-3(3.3.4.1), the Board proposes to add the allowance for existing Type II Small

Assisted Living Facilities to have a path of egress acceptable to the Authority Having Jurisdiction (AHJ); 5) in Subsection R710-3-3(3.3.6), the Board proposes to add the requirements for Type II facilities that require specialized security; 6) in Subsection R710-3-3(3.3.7), the Board proposes to add the requirements for Type II Assisted Living Facilities where approved listed delay egress locks are allowed for specialized security; 7) in Subsection R710-3-3(3.4), the Board proposes to add a new subsection called Residential Treatment Assisted Living Facilities. This new subsection defines fire and life safety requirements needed for those Residential Treatment Assisted Living Facilities that are licensed by the Utah Department of Human Services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: The International Fire Code (IFC), 2003 edition, as published by the International Code Council; and the International Building Code (IBC), 2003 edition, as published by the International Code Council

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be a cost of $59 per volume to purchase the 2003 International Fire Code and a cost of $72 per volume for the purchase of the 2003 International Building Code. The aggregate anticipated cost to the state budget would be approximately $3,200 to purchase these incorporated references.

❖ LOCAL GOVERNMENTS: There would be a cost of $59 per volume to purchase the 2003 International Fire Code and a cost of $72 per volume for the purchase of the 2003 International Building Code. The aggregate anticipated cost to local government is impossible to predict since the number of volumes purchased by local government is unknown.

❖ OTHER PERSONS: There is no aggregate anticipated cost or savings to other persons because these proposed rules do not effect other persons with regard to cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a cost of $59 per volume to purchase the 2003 International Fire Code and $72 per volume to purchase the International Building Code.

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 proposed rules.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. Introduction.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), [~~2000~~]2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-3-3, et seq.

1.2 International Building Code (IBC), [~~2000~~]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.

1.3 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-3-2. Definitions.

2.1 "Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to "Ambulatory" may be approved under the conditions stated in Sections [~~3.3.7~~]3.2.9, 3.3.8 or 3.4.9.

2.2 "Assisted Living Facility" means:

2.2.1 a Type 1 Assisted Living Facility, which is a residential facility licensed by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.2 a Type 2 Assisted Living Facility, which is a residential facility licensed by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

2.2.3 a Residential Treatment Assisted Living Facility, which creates a group living environment for four or more residents licensed by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.[~~3~~]4 Assisted Living Facilities shall be classified by size as follows:

2.2.[~~3~~]4.1 "Type 1, [~~and~~]2, and Residential Treatment Limited Capacity [~~Assisted Living~~]Facility" means an assisted living facility accommodating five or less residents, excluding staff.

2.2.[~~3~~]4.2 "Type 1, [~~and~~]2, and Residential Treatment Small [~~Assisted Living~~]Facility" means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

2.2.[~~3~~]4.3 "Type 1, [~~and~~]2, and Residential Treatment Large [~~Assisted Living~~]Facility" means an assisted living facility accommodating more than sixteen residents, excluding staff.

2.3 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "IBC" means International Building Code.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

2.9 "Semi-independent" means a person who is:

2.9.1 physically disabled but able to direct his or her own care; or

2.9.2 cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

2.10 "SFM" means State Fire Marshal.

R710-3-3. Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

3.1.3 IFC, Chapter 9, Sections 907.3.1.2 and 907.3.1.[~~9~~]8 is deleted.

3.2 Type 1 Assisted Living Facilities

3.2.1 Type 1 Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.2.2 Type 1 Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type 1 Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type 1 Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in [~~IBC~~]IFC, Chapter 10, Section [~~1009~~]1025.

3.2.5 In Type 1 Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.2.6 Type 1 Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.2.6.1 An automatic fire sprinkler system shall be provided throughout buildings listed as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas. 3.2.7 Type 1 Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type 1 Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.2.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.2.9 In a Type 1 Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.3 Type 2 Assisted Living Facilities

3.3.1 Type 2 Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.3.1.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.2 Type 2 Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type 2 Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.3.3.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.4 Type 2 Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.4.1 Type 2 Small Assisted Living Facilities in existence before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

3.3.5 Type 2 Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2, and maintained in accordance with the IBC and IFC.

3.3.5.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.6 In Type II Assisted Living Facilities, where the clinical needs of the patients require specialized security, approved access controlled egress doors may be installed when all of the following are met:

3.3.6.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

3.3.6.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

3.3.6.3 The controlled egress doors shall unlock upon loss of power.

3.3.7 In Type II Assisted Living Facilities, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IBC, Section 1008.1.8.6. Section 1008.1.8.6(3) is deleted.

[~~3.3.6 Upon request to the Utah Department of Health for a non-ambulatory variance as allowed in Utah Administrative Code, R432-2-18, the following conditions shall be met:~~

~~3.3.6.1 The attending physician's diagnosis and orders for care.~~

~~3.3.6.2 Hospice plan of care if applicable~~

~~3.3.6.3 The facilities service plan which includes a statement that the facility is willing and capable of meeting the residents needs.~~

~~3.3.6.4 A statement from the responsible party stating that they will be involved in the plan of care.~~

~~3.3.6.5 The resident will be provided with 24 hour/7 day one to one care and that care giver will be capable of exiting the resident from the facility in an emergency.~~

~~3.3.6.6 The authority having jurisdiction will be sent a copy of this variance.~~

] 3.3.8 In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.4 Residential Treatment Assisted Living Facilities

3.4.1 Residential Treatment Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.4.2 Residential Treatment Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.3 Residents in Residential Treatment Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.4.4 In Residential Treatment Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IBC, Chapter 10, Section 1009.

3.4.5 In Residential Treatment Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.4.6 Residential Treatment Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.4.7 Residential Treatment Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.8 Residential Treatment Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.4.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.4.9 In a Residential Treatment Assisted Living Facility, non-ambulatory persons are permitted after meeting the requirements listed in Utah Administrative Code, R501-2-11, and receiving approval from the Office of Licensing, Utah Department of Human Services.

KEY: assisted living facilities
[~~January 2, 2002~~]November 16, 2004
Notice of Continuation June 19, 2002
53-7-204

Public Safety, Fire Marshal
R710-8
Day Care Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27436
FILED: 09/16/2004, 14:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment updates Rule R710-8 with the current incorporated references that are currently adopted in all the other administrative rules that are overseen by the Utah Fire Prevention Board.

SUMMARY OF THE RULE OR CHANGE: On January 2, 2004, the 2003 edition of the International Fire Code became the fire code for the State of Utah. On January 1, 2004, the 2003 International Building Code became the building code for the State of Utah. Rule R710-8 was not updated at that time by error to the currently adopted incorporated references. This rule filing corrects that mistake.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: The International Fire Code (IFC), 2003 edition, as published by the International Code Council; and the International Building Code (IBC), 2003 edition, as published by the International Code Council

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be a cost of $59 per volume to purchase the 2003 International Fire Code and a cost of $72 per volume to purchase the 2003 International Building Code. The aggregate anticipated cost to the state budget would be approximately $3,200 to purchase these incorporated references.

❖ LOCAL GOVERNMENTS: There would be a cost of $59 per volume to purchase the 2003 International Fire Code and a cost of $72 per volume to purchase the 2003 International Building Code. The aggregate anticipated cost to local government is impossible to predict since the number of volumes to be purchased by local government is unknown.

❖ OTHER PERSONS: There is no aggregate anticipated cost or savings to other persons because these proposed rule changes do not effect other persons with regard to cost unless they want to purchase the codes. There would be a cost of $59 per volume to purchase the 2003 International Fire Code and $72 per volume to purchase the International Building Code.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a cost of $59 per volume to purchase the 2003 International Fire Code and $72 per volume to purchase the International Building Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses for the enactment of these proposed rule amendments.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-8. Day Care Rules.
R710-8-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), [~~2000~~]2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-8-3, et seq.

1.2 International Building Code (IBC), [~~2000~~]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.

1.3 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

KEY: fire prevention, day care
[~~July 2, 2003~~]November 16, 2004
Notice of Continuation April 23, 2002
53-7-204

▼ ▼

Workforce Services, Workforce Information and Payment Services
R994-201-101
General Definitions and Acronyms

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27470
FILED: 10/01/2004, 17:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment is to add acronyms and definitions used in all the rules under Title R994.

SUMMARY OF THE RULE OR CHANGE: As the Department rewrites all of its rules, it is putting terms appearing several times throughout all the rules in this section and adding commonly used acronyms. (DAR NOTE: The other rules filed for this issue are: the proposed repeal and reenactment of Rule R994-401 under DAR No. 27469; the proposed repeal and reenactment of Rule R994-403 under DAR No. 27471; the proposed amendment of Rule R994-405 under DAR No. 27472; and the proposed amendment to Section R994-406-505 under DAR No. 27473.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 103; and Title 35A, Chapter 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: This proposed amendment 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 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

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" 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.[

~~(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.~~]

([~~6~~]5) 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.

(6) 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.

(7) Calendar Quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

([~~7~~]8) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

([~~8~~]9) Covered Employment.

"Covered employment" is employment subject to a state or federal unemployment insurance laws, 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.

([~~9~~]10) Department.

"Department" means the Department of Workforce Services.

([~~10~~]11) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

([~~11~~]12) 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.

([~~12~~]13) Local Office.

"Local office" means the Employment Center of any geographical area.

(14) MBA means maximum benefit amount.

([~~13~~]15) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association,

([~~14~~]16) 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.

([~~15~~]17) 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.

([~~16~~]18) 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.

(19) WBA means weekly benefit amount.

KEY: unemployment compensation, definitions
[~~April 4,~~]2004
Notice of Continuation May 23, 2003
35A-4-201

Workforce Services, Workforce Information and Payment Services
R994-401
Payment of Benefits

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 27469
FILED: 10/01/2004, 16:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to update the rule to conform to current practices and the changes in technology and law.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all of its rules to insure they conform to current practice and law. The Department determined to proposed a repeal and reenactment because some sections and provisions in this rule were moved to a different rule, most of the rule numbers changed, and some of the sections referred to antiquated practices before the advent of telephone claims and computers. Crossing out and underlining would have been too complicated and confusing. While some sections have been moved to other rules filed for this same issue, there are no substantive changes to procedure or eligibility contemplated by this rule change. (DAR NOTE: The other rules filed for this issue are: the proposed amendment to Section R994-201-101 under DAR No. 27470; the repeal and reenactment of Rule R994-403 under DAR No. 27471; the proposed amendment of Rule R994-405 under DAR No. 27472; and the proposed amendment to Section R994-406-505 under DAR No. 27473.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 103; and Title 35A, Chapter 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 proposed repeal and reenactment 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 proposed repeal and reenactment 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
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THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-401. Payment of Benefits.
[~~R994-401-101. Bi-Weekly Payment of Benefits -- General Definition.~~

~~Eligibility for benefits is established with regard to a calendar week. Benefits shall be paid on a bi-weekly basis. Therefore, benefits will not become due until the end of a two-week period for which benefits are claimed in accordance with Section 35A-4-401 governing the filing of claims.~~

~~R994-401-201. Weekly Benefit Amount - General Definition.~~

~~Section 35A-4-401 outlines the procedure for determining the Weekly Benefit Amount (WBA) and the Maximum Benefit Amount (MBA) which an eligible claimant can receive and establishes the provisions for recomputations based on retirement income. Claimants are instructed when filing the initial claim to report all base period employers. Employers are required by law to report to the Department the wages paid to all employees. Wage information is requested from the employers listed by the claimant if wages have not already been reported for the claimant by that employer. Based on the wage information reported by the employers which the claimant listed on his initial claim, a determination is made of his Weekly Benefit Amount which is called his "monetary determination." When the regular monetary determination is made, the claimant is sent notification of the wages reported by the employers and he is told of his appeal rights. The claimant is also told that he may lose all rights to adjustment to the monetary determination if he does not notify the Department of errors or omissions within the time permitted for an appeal. Employers are notified as to the wages used in determining a claimant's monetary determination, the employer's potential liability for benefit costs, and the time limitation for requesting relief of charges or correction of the wages. The employer's tax rate is dependent upon the proportion~~

of the claimant's base period wages paid by that employer and the amount of benefits actually received by the claimant. The employer is also given a second opportunity to report to the Department any errors or omissions. When a second notice is sent to the employer he is given 30 days as provided by Subsection 35A-4-306(3) to advise the Department of any corrections.

R994-401-202. Total Wages.

The total wages used to determine the Weekly Benefit Amount are limited to wages reported to the Department by base period employers and verifiable wages paid by additional base period employers reported by the claimant on his initial claim form.

R994-401-203. Revision of Monetary Determination.

(1) After a claimant has been notified by a Monetary Determination of the amount of the weekly and maximum benefits for which he may be eligible, and the employer has been notified of the wages used in determining his potential liability for benefit costs, a revision of the monetary determination will be made consistent with rules pertaining to Subsection 35A-4-403(1)(e) only when:

(a) the appellant, either the claimant or employer, files an appeal within the time limitations established by the act for filing appeals, or the appellant has shown good cause for filing the appeal late in accordance with the regulations under Subsection 35A-4-406(3) which limit good cause for late appeals, or

(b) the appellant can show good cause for failure to accurately report the base period employment, or

(c) the Department may exercise continuing jurisdiction based upon a mistake as to the facts, but the exercise of this jurisdiction is discretionary with the Department.

(2) As a general rule, the Department will not revise a monetary determination when the request is made by the party who will benefit by that revision if that party has had a previous opportunity to appeal and has failed to show good cause for not filing a timely appeal. The Department may exercise its jurisdiction based upon knowledge of a mistake as to facts if the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not reasonably have filed a timely appeal. No redetermination will be made if the claimant has received Extended Benefits unless a redetermination would provide sufficient regular benefits to offset the payments made on the Extended Benefit program.

R994-401-204. Wages Paid.

"Wages paid" include those wages actually received by the worker and wages constructively paid without regard to the ending date of the pay period, provided the employer's liability for payment has become unconditionally established. Wages are considered constructively paid on the earliest of: the next regular pay day in accordance with the employer's customary payment practices, the day required by contractual agreement, or as required by state law.

R994-401-205. Wages Paid During the Quarter.

"Wages paid during the quarter" are all regular wages paid within the calendar quarter. Special payments made within the quarter which were not due on any specific day shall be treated as wages paid during the quarter in which the payment is made unless a written request is made by the claimant for apportionment to the calendar quarters in which the remuneration was earned and the request is received by the Department within ten days of the issuance of the monetary determination as provided by Subsection 35A-4-401(7) of the Utah Employment Security Act.

R994-401-206. Calendar Quarter.

Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

R994-401-207. Retirement or Disability Retirement Income.

(1) A claimant's weekly benefit amount is reduced by 100% of any retirement benefits, social security, pension or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for social security retirement benefits, the reduction is 50% for claims with an effective date on or after July 4, 2004 and on or before July 2, 2006. The payments must be:

(a) from a plan contributed to by a base period employer. Payments made by the employer for whom the claimant did not work during the benefit year are not counted. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period.

(b) based on prior employment and the claimant qualifies because of age, length of service, disability or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k), or IRA should not be used to reduce the weekly benefit amount. Payments from worker's compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former spouse directly and it is pursuant to court order or a signed, stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the Weekly Benefit Amount. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's Weekly Benefit Amount will be made.

(2) A claimant who could be eligible for a retirement income, but chooses not to apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the Maximum Benefit Amount in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in 35A-4-401(2)(d).

R994-401-301. Partial Payments - General Definition.

(1) A claimant who is working less than full time can earn up to 30% of his Weekly Benefit Amount (WBA) without any reduction in the benefit payment. The claimant's gross earnings which are more than 30% of the WBA will be deducted dollar for dollar with respect to any claim filed. A claimant who earns less than his WBA and files a claim may be credited with a waiting week, or paid a part payment. A claimant who earns equal to or more than his WBA will not be credited with a waiting week nor be eligible for any part payment for that week.

(2) All work and earnings must be reported with respect to a specific week. For example, when an otherwise eligible claimant is required to report income from a farm, and is paid one day of holiday pay from a former employer, and then he accepts a one day temporary job, the work and earnings from all three sources must be reported. The accumulated earnings reported by the claimant in excess of 30% of his WBA will be deducted from the payment for that week. If the total earnings are equal to or in excess of the WBA, no payment would be made.

(3) Reportable earnings which a claimant must report on the weekly claim includes any and all wages, remuneration, or compensation for services even if the employer is not required to pay contributions on these wages.

R994-401-302. Liability of Part-time Concurrent Reimbursable Employers.

(1) If the claimant worked concurrently for two or more employers during his base period and is separated from one or more of these employers, but continues in his regular part-time work with a reimbursable employer, his Weekly Benefit Amount will be determined on the basis of his total base period employment and earnings. However, his Maximum Benefit Amount for the Benefit year will be based solely on the employment from the separating employer excluding the employment and earnings from the part-time reimbursable employer. The non-separating employer will not be liable for benefits paid provided: 1) the employer makes a written request within ten days of the first notification of the employer's potential liability, and 2) the hours of work have not been reduced below the least number of hours normally worked during the base period of the claim, and 3) the claimant is not working on an "on call" basis. If the claimant is also separated from this employer within the benefit year or the claimant's hours of work are reduced below the least number of hours worked during the base period, the reimbursable employer will be liable to pay the proportionate amount of benefit payments paid thereafter.

(a) For example: The claimant has two base period employers for whom he worked concurrently, one full-time where he earned $8,000 and was separated and one part-time reimbursable employer where he earned $2,000 and is still working. If his high quarter earnings were $2,500, his weekly benefit amount would be $96 per week using the base period wages from both employers. However, under this rule, the Maximum Benefit Amount (MBA) is determined only by using the wages from the employer from whom he is separated, in this case, the total base period wages from the separating employer are only $8,000. The MBA is determined by taking 27% of the $8,000 which is $2,160 divided by the full WBA ($96) which equals 22.5 or 22 weeks of benefits. Therefore, the claimant's WBA is 22 x $96 or $2,112 and the part-time employer is relieved of any benefit costs until the claimant is separated from this employer. The weekly payment is determined by reducing the claimant's WBA by that portion of his weekly earnings in excess of 30% of his WBA. In this example the claimant must report all of his earnings, but only those earnings of over $28 which is 30% OF $96, will be deducted from his weekly payment.

(2) If the claimant is separated within the benefit year from the remaining employment, a new Monetary Determination can be made at the request of the claimant and would include all base period wages. The effective date of the Revised Monetary Determination will be the first day of the week in which the request is made.

R994-401-303. Income Which Is Reportable.

(1) All payments whether an hourly wage, salary, or commission paid for the performance of any service shall be reportable as a wage unless specifically identified as an exception in Sections R994-401-304 and R994-401-305.

(2) Any payments in kind which are remuneration for services performed by an employee as a part of wages, or wholly comprises an employee's wages must be reported and shall be determined as follows:

(a) If a cash value for meals, lodging or other payment is to promote good will or to attract prospective employees, except where the payments are for the convenience of the employer as identified in Subsection R994-401-305(1), the amount agreed upon by contract shall be deemed the value of any meals, lodging or other payment provided the value equals or exceeds the cash value prevailing under similar conditions in the locality.

(b) If a cash value for any meals, lodging or other payment for service as identified in the preceding paragraph, is not agreed upon, the Department may determine or approve, on the basis of prevailing amounts paid under similar conditions in the locality, the cash value.

(c) Gratuities or tips paid directly to an employee by a customer or his employer for a service provided.

(d) Where an employee is hired with work equipment, the fair value of the employee's services, as distinguished from an allowance for use of his equipment, if specified in the contract of hire, shall be considered "wages". If the contract of hire does not specify the employee's wages, or the value of wages agreed upon under the contract of hire is not a fair value, the Department shall determine the employee's wages taking into consideration the prevailing wages for similar work under comparable conditions.

R994-401-304. Income Which May Not Be Reportable.

(1) Bonus.

A bonus is given to an employee in addition to his usual wages. If paid as a direct result of past performance of service or for a specific prior period it is not a wage with respect to a week after the claimant was separated. If the payment is made contingent upon termination it is a wage with respect to the week or weeks after the individual has been separated. Payments given at the time of separation that are based on years of service will be considered severance payment and reportable in accordance with Subsection 35A-4-405(7).

(2) Training Allowances.

Some employers may require training as a prerequisite to employment even though a job may not be guaranteed at the end of the training. Learning a new job may be considered a service, for example: on-the-job training or in-service training, will be considered to be service rendered for wages. Any payment made in consideration of training is considered to be wages unless shown to be:

(a) expenses necessary for school; for example, tuition, fees, and books;

~~(b) travel expenses;~~
~~(c) actual costs for room and board where costs are created as a necessary expense for the schooling;~~
~~(d) payments exempt from income tax liability;~~
~~(e) payments not directly related to the number of hours of training, provided the claimant is not eligible for regular employee benefits, including sick pay, vacation pay, insurance programs.~~
~~(3) Contractual Obligations.~~
~~Money or other things of monetary value paid to or received by an individual not in consideration of services performed or for the holding of himself available ordinarily are not wages. However, in contractual situations where an individual is paid for the express reason of being available to an employer, and there are either limits placed upon the individual as to how much earnings, if any, may be earned while receiving these payments, or on the time the individual must hold himself available to the employer the payment would be considered reportable wages.~~

~~R994-401-305. Income Which Is Not Reportable.~~
~~Payments which are received for reasons other than the performance of a service are not wages. Some examples are:~~
~~(1) Meals and lodging: When provided by an employer to an employee, if excluded from the definition of wages by the Internal Revenue Service as under the following conditions:~~
~~(a) Meals that are furnished:~~
~~(i) on the business premises of the employer;~~
~~(ii) for the convenience of the employer;~~
~~(iii) without charge for substantial non-compensatory business reasons, not for the purpose of additional compensation. Substantial noncompensatory business reasons will be limited to meals:~~
~~(A) to have employees available for emergency call;~~
~~(B) to have employees with restricted lunch periods;~~
~~(C) because adequate eating facilities are not otherwise available;~~
~~(iv) subject to charge:~~
~~(A) which an employee may or may not purchase;~~
~~(B) for which an employer charges an unvarying amount whether the meal is taken or not.~~
~~(b) Lodging that is furnished:~~
~~(i) on the business premises of the employer;~~
~~(ii) as a condition of employment;~~
~~(iii) for the convenience of the employer; for example, to have an employee available for call at any time.~~
~~(2) Payments from corporate stocks and bonds;~~
~~(3) Pensions: If not contributed to or maintained by base period employers or not based solely on service; for example, a disability pension from the Department of Veteran's Affairs;~~
~~(4) Public service in lieu of payment of fines: The court system in Utah does not assign monetary value to public service. Any fine assessed by the court is considered to be waived in lieu of public service. The issue of benefit payment will be decided on the basis of the rule which deals with voluntary workers, Section R994-207-107;~~
~~(5) Jury and witness fees: Fees paid for jury duty or as witness fees will be considered reimbursement for expenses;~~
~~(6) Expenses: Amounts paid specifically, either as an advance or reimbursement, for bona fide, ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. If an accounting by the employee is not required by the employer for actual expenses, the Department shall not require itemization;~~
~~(7) Grants, public or private assistance or other support payments; Payments that are specifically identifiable as not being provided for the rendering of service will not be considered wages;~~
~~(8) Money or other considerations which are normally provided as a matter of course to immediate family members;~~
~~(9) Income from investments;~~
~~(10) Disability awards under the Workmen's Compensation Act.~~

~~R994-401-601. Notification of Eligibility Determination - General Definition.~~
~~The purpose of Sections R994-401-601 through R994-401-604 is to provide notification to employers of decisions made by the Department, so that employers who have information or concerns will have an opportunity to provide information and appeal decisions. The primary objectives of a benefit ratio tax are to increase incentives for employer participation in providing adequate information for determining eligibility, for program improvement and to make building and maintaining a solvent reserve fund the responsibility of those employers who use the system. However, since the most recent employer may not be in the base period and therefore not subject to charges, other employers should be notified of the issues that involve them.~~

~~R994-401-602. Notification to the Most Recent Employer.~~
~~"Prior to the payment of benefits" is considered to mean at the initial point of the claim before payment of any benefits is made. Therefore, when an initial claim is filed, the most recent employer will be notified of decisions made on every issue.~~

~~R994-401-603. Notification at Time of Initial Claim.~~
~~At the time an initial claim is filed, all employers from the beginning of the base period to the time of the filing of the claim are entitled to notice as provided by Section 35A-4-306(2).~~

~~R994-401-604. Notification to Involved Employers.~~
~~(1) Employers who make a written protest of payment of benefits on any grounds will be notified of the decision made with regard to that issue.~~
~~(2) Notification will be given during the course of the claim to employers who have or reasonably could be expected to have information with regard to any issue involving eligibility for benefits including issues under: Subsections 35A-4-403(3) deferrals due to employer attachment, 35A-4-405(1) voluntary separations, 35A-4-405(2) discharges, 35A-4-405(3) failure to obtain employment, 35A-4-405(4) strikes, 35A-4-403(2) school and Department approval, 35A-4-405(7) separation payments, 35A-4-405(8) reasonable assurance of continued employment for school employees, 35A-4-405(9) contractual attachment of athletes, 35A-4-405(10) eligibility of aliens. Involved employers will be notified of information reported by the claimant and the employer will be given an opportunity to provide a rebuttable or additional information prior to the rendering of a decision. Any employer who provides information will be advised of the decision and given appeal rights.~~]

R994-401-101. Payment of Benefits.
Eligibility is established and benefits are paid on a weekly basis. The week starts on Sunday and ends on Saturday. Benefits do not become due until the end of the week for which benefits are claimed.

R994-401-201. Weekly Benefit Amount (WBA), Maximum Benefit Amount (MBA), and Monetary Determination.

(1) The formulas for determining the WBA and the MBA are found in Section 35A-4-401.

(2) The wages used to determine the WBA and the MBA are limited to wages reported to the Department by base period employers and verifiable wages paid by additional base period employers reported by the claimant in the initial claim. If an employer does not report wages and the claimant can verify wages from that employer, those wages may be included.

(3) The Department will send the claimant a "Notice of Monetary Determination." The notice will inform the claimant of the WBA, MBA, and the wages used to determine the claimant's monetary eligibility. The notice will also inform the claimant of his or her right to appeal the monetary determination. The claimant must notify the Department of any errors in the monetary determination. The time limit for notifying the Department of any errors or for appealing a monetary determination is the same as filing an appeal from an initial Department determination and is governed by rules R994-508-102 through R994-508-104.

(4) The monetary determination is based on the wages actually paid during the base period regardless of when the work was performed.

(5) To be monetarily eligible, a claimant must have earned base period wages of 1 and 1/2 times the high quarter wages and also meet a minimum dollar amount as established by the monetary base period wage requirement as defined in Section 35A-4-201.

(6) If a claimant is not monetarily eligible under the 1 and 1/2 times requirement in paragraph (5) of this section, but meets the monetary base period wage requirement, the claimant can still be eligible under this section if the claimant had earnings of at least five percent of the "monetary base period requirement for insured work," as defined in Subsection 35A-4-201(17), in each of at least 20 weeks during the base period. The earnings must be for work performed during each of the 20 weeks, all of which must fall within the base period, regardless of when the claimant received payment for the work. The requirement that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in R994-401-202.

(7) The dollar amount for each of the 20 weeks required to establish eligibility will be determined by the monetary base period requirement for insured work in effect for the calendar year in which the initial claim is filed even if some or all of the 20 weeks are in a different calendar year.

(8) If the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, it is the claimant's responsibility to show 20 weeks of covered employment which meet the minimum dollar amount. Acceptable proof of covered employment includes:

(a) appropriately dated check stubs issued by the employer;

(b) a written statement from the employer showing dates of employment and the amount of earnings for each week;

(c) time cards;

(d) canceled payroll checks; or

(e) personal or business records kept in the normal course of employment that would substantiate work and earnings.

(9) An employer's potential liability is based on its proportion of the claimant's base period wages. Employers will be informed of the wages used in determining a claimant's monetary entitlement, the employer's potential liability for benefits costs, and the right to and time limitation for requesting relief of charges or a correction to wages. A contributory employer is given a notice of all benefit costs each quarter and has the opportunity to report any errors or omissions to the Department at that time as well. The quarterly notices give the employer 30 days to advise the Department of any corrections, as provided in Subsection 35A-4-306(3).

(10) A party failing to file a timely appeal or protest may lose its right to have the monetary determination corrected. An untimely appeal or protest may be considered if the party had good cause, as defined in R994-508-104.

(11) The Department may revise the monetary determination after the expiration of the appeal time if there has been a mistake as to the facts or the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not have reasonably filed a timely appeal. The decision to revise a monetary determination after the appeal time has expired is discretionary with the Department.

R994-401-202. Wages Used to Determine Monetary Eligibility.

(1) "Wages paid" include those wages actually received by the worker and wages constructively paid, provided the employer's liability for payment has become unconditionally established. Wages are considered constructively paid, for the purposes of this section, on the earliest of: the next regular pay day in accordance with the employer's customary payment practices, the day required by contractual agreement, or as required by state law.

(2) Quarterly wages are all wages paid or constructively paid during a quarter regardless of when those wages are earned. Bonus or lump sum payments which do not meet the definition of vacation and severance pay in R994-405-701 et seq, made within the quarter which were not due on any specific day shall be treated as wages paid during the quarter in which the payment is made unless a request is made by the claimant for apportionment to the calendar quarters in which the remuneration was earned. Any such request must be received by the Department within ten days of the issuance of the monetary determination as provided by Subsection 35A-4-401(7).

R994-401-203. Retirement or Disability Retirement Income.

(1) A claimant's WBA is reduced by 100 percent of any retirement benefits, social security, pension, or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for social security retirement benefits, the reduction is 50 percent for claims with an effective date on or after July 4, 2004, and on or before July 2, 2006. The payments must be:

(a) from a plan contributed to by a base-period employer. Payments made by the employer for whom the claimant did not work during the benefit year are not counted. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period.

(b) based on prior employment and the claimant qualifies because of age, length of service, disability, or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k) or IRA should not be used to reduce the WBA Payments from workers' compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former

spouse directly and it is pursuant to court order or a signed, stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under Subsection 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving, retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed, would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the WBA. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's WBA will be made.

(2) A claimant who could be eligible for a retirement income, but chooses not to apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the MBA in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in Subsection 35A-4-401(2)(d).

R994-401-301. Partial Payments - General Definition.

(1) A claimant's earnings that are equal to or less than 30 percent of the WBA will not result in a reduction of the WBA. The claimant's gross weekly earnings over 30 percent of the WBA will be deducted dollar for dollar from the WBA in the week in which it was earned. A claimant who earns less than the WBA and files a claim may be credited with a waiting week, or paid a partial payment. A claimant who earns equal to or more than the WBA will not be credited with a waiting week nor be eligible for any partial payment for that week.

(2) All work and earnings must be reported on a weekly basis. For example, when an otherwise eligible claimant is required to report income from a farm, and is paid one day of holiday pay and then accepts a one-day temporary job, the work and earnings from all three sources must be reported.

(3) Earnings are reportable in the week the work is performed which may be different from the week payment is received. If a claimant receives payment for commission sales, or other periodic earnings, the income must be attributed to, and reported in, the week when the work was performed.

(4) Reportable earnings which a claimant must report on the weekly claim include any and all wages, remuneration, or compensation for services even if the employer is not required to pay contributions on these wages.

R994-401-302. Liability of Part-time Concurrent Reimbursable Employers.

(1) If the claimant worked concurrently for two or more employers during the base period and is separated from one or more of these employers, but continues in the regular part-time work with a reimbursable employer, that nonseparating employer will not be liable for benefit costs provided;

(a) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed,

(b) the claimant is not working on an "on call" basis,

(c) the number of hours of work have not been reduced, and

(d) the employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(2) The claimant's WBA will be determined on the basis of the total base period employment and earnings, however, earnings from the part-time reimbursable employer will be excluded from the calculation of the MBA.

(3) If the claimant is later separated from this employer within the benefit year or the claimant's hours of work are reduced below the customary number of hours worked during the base period, the reimbursable employer will be liable to pay the proportionate amount of benefit payments paid thereafter. A new monetary determination can also be made at the request of the claimant and would include all base period wages. The effective date of the revised monetary determination will be the first day of the week in which the request is made.

R994-401-303. Income The Claimant must Report While Receiving Unemployment Benefits.

(1) All payments whether an hourly wage, salary, or commission paid for the performance of any service shall be reportable unless specifically identified as an exception in R994-401-304 or R994-401-305.

(2) Gratuities or tips paid directly to an employee by a customer or the employer for a service provided are reportable.

R994-401-304. Income Which May Be Reportable Under Certain Circumstances.

(1) A bonus paid as a direct result of past performance of service for a specific period prior to the separation is not reportable with respect to any week after the separation. A bonus is a payment given to an employee in addition to usual wages. If the payment is made contingent upon termination it will be considered a severance payment. Payments given at the time of separation that are based on years of service will also be considered severance payments. Severance payments are reportable in accordance with Subsection 35A-4-405(7).

(2) If a claimant is hired to start working on a certain day and the work is not available as of that date but the employer puts the claimant on the payroll as of that date, the claimant is considered employed and those wages are reportable.

(3) Any payment made in consideration of training that is required by the employer is considered to be reportable income unless shown to be:

(a) expenses necessary for school, for example, tuition, fees, and books;

(b) travel expenses;

(c) actual costs for room and board where costs are created as a necessary expense for the schooling; and

(d) the payments are exempt from income tax liability.

(3) If a claimant is being paid under a contract for the express purpose of being available to an employer, and there are limits placed upon the individual either as to how much earnings, if any, may be earned while receiving these payments, or on the time the individual must hold himself available to the employer, the payment is considered reportable income.

(4) Any payments in kind are reportable, including the cash value for meals, lodging, or other payment unless the meals and lodging are excluded from the definition of wages by the Internal Revenue Service as under the following conditions:
(a) Meals that are furnished:
(i) on the business premises of the employer;
(ii) for the convenience of the employer;
(iii) without charge for substantial non-compensatory business reasons, not for the purpose of additional compensation. Substantial noncompensatory business reasons will be limited to meals which are provided:
(A) to have employees available for emergency call;
(B) to have employees with restricted lunch periods;
(C) because adequate eating facilities are not otherwise available.
(b) Lodging that is furnished:
(i) on the business premises of the employer;
(ii) as a condition of employment;
(iii) for the convenience of the employer, for example, to have an employee available for call at any time.
(5) Pensions that do not meet the criteria in R994-401-203 are not reportable income.

R994-401-305. Income a Claimant is not Required to Report While Receiving Unemployment Benefits.
Payments which are received for reasons other than the performance of a service are not reportable income. Some examples are:
(1) Payments from corporate stocks and bonds;
(2) Public service in lieu of payment of fines;
(3) Fees paid for jury duty or as witness fees will be considered reimbursement for expenses;
(4) Amounts paid specifically, either as an advance or reimbursement, for bona fide, ordinary, and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. If an accounting by the employee is not required by the employer for actual expenses, the Department shall not require itemization;
(5) Payments specifically identifiable as not being provided for the rendering of service will not be considered wages including grants, public or private assistance or other support payments;
(6) Money or other considerations which are normally provided as a matter of course to immediate family members;
(7) Income from investments;
(8) Disability or permanent impairment awards under the Workers' Compensation Act; and,
(9) Payment attributable to the value of any equipment owned by the claimant and necessary for the performance of the job. If there is no contract of hire or the contract does not delineate what portion is payable for the equipment, the Department will determine the claimant's wages based on the prevailing wage for similar work under comparable conditions.

KEY: unemployment compensation, benefits
[~~July 19,~~]2004
Notice of Continuation May 23, 2002
35A-4-401(1)
35A-4-401(2)
35A-4-401(3)
35A-4-401(6)

▼ ▼

Workforce Services, Workforce Information and Payment Services
R994-403
Claim for Benefits

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 27471
FILED: 10/01/2004, 19:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment updates the rule to conform to current practices and the changes in technology and the law.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all of its rules to insure they conform to current practice and law. The Department determined to do a repeal and reenactment of this rule because some sections and provisions in the rule were moved to a different rule, most of the rule numbers changed, and some of the sections referred to antiquated practices before the advent of telephone claims and computers. Crossing out and underlining would have been too confusing and complicated. It is also hoped that this rewrite is easier to understand. While some sections have been moved to other rules filed for this issue, there are no substantive changes to procedure or eligibility contemplated by this rule change. (DAR NOTE: The other rules filed for this issue are: the proposed repeal and reenactment of Rule R994-401 under DAR No. 27469; the proposed amendment to Section R994-201-101 under DAR No. 27470; the proposed amendment of Rule R994-405 under DAR No. 27472; and the proposed amendment to Section R994-406-505 under DAR No. 27473.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 103; and Title 35A, Chapter 403

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 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-403. Claim for Benefits.
[~~R994-403-101a. Timely Filing - General Definition.~~

~~The following rules define the procedures for filing new and continued claims or for reopening claims. These rules also determine how the effective date of the new or reopened claim is established as well as circumstances under which a claim may be canceled.~~

~~R994-403-102a. Filing a New Claim.~~

~~(1) Effective Date of a New Claim.~~

~~When a claimant believes he may be entitled to unemployment insurance benefits, it is his responsibility to file a claim during the week he desires to claim the benefits, not after the week has passed. Backdating prior to the week of filing will be allowed only if good cause can be established in accordance with Section R994-403-107a, and Subsections 35A-4-403(1)(a) and 35A-4-406(1)(a). The effective date of the new claim establishes the period of time during which wages can be used for determining the monetary entitlement, and in the case of law changes, the laws under which eligibility is determined. A claim for benefits or waiting week credit shall be filed as follows:~~

~~(a) An individual must contact the claim center to file a claim for benefits.~~

~~(b) The effective date of the claim for benefits shall be the Sunday immediately preceding the date the claim is filed, provided that during that week the claimant is not entitled to earnings in excess of his weekly benefit amount. An exception to this rule may be made if the claimant can show it is more advantageous to have his claim effective the week in which he reported, provided he did not work full-time hours during that week.~~

~~(2) Filing a New Claim by Mail.~~

~~The Department may allow registration for work and claim filing by mail. If an individual completes and mails the forms as instructed, no later than twelve days following the date upon which they were mailed, as established by a postmark, his claim shall be effective the Sunday immediately preceding the date the request was made. If he fails to complete and mail his claim forms within the period prescribed above, his claim shall be effective on the Sunday immediately preceding the date the forms are received by the Department, provided, however, if good cause is established for the delay in accordance with Section R994-403-107a, the Department may permit an effective date as provided above.~~

~~(3) Social Security Number and Proof of Identity.~~

~~Unemployment insurance claims are identified by a claimant's social security number. A claimant filing a new claim for benefits shall be required to provide his social security number and proof of identity. Acceptable proof of identity will generally not be established without two reliable forms of identification. Failure to provide sufficient proof of identity or a social security number within three weeks of the effective date of the claim shall result in a denial of benefits in accordance with Subsection 35A-4-403(1)(e) of the Act.~~

~~R994-403-103a. Cancellation of Claim.~~

~~(1) Once a weekly claim has been filed and a monetary determination has been issued, the claim is considered to have been established even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah. However, a claim may be canceled if the claimant submits a written request to cancel the claim and he can show one of the following circumstances:~~

~~(a) no weekly claims have been filed;~~

~~(b) cancellation is requested prior to the issuance of the monetary determination;~~

~~(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant either returns any warrants that have been issued or he makes full repayment of benefits paid;~~

~~(d) the claimant had earnings equal to or greater than his weekly benefit amount in the form of severance or vacation payments applicable to all weeks for which claims were filed;~~

~~(e) the claimant returned to work and reported earnings equal to or greater than his weekly benefit amount applicable to all weeks for which claims were filed;~~

~~(f) the claimant meets the requirements for filing a new claim under the Worker's Compensation provision of Section 35A-4-404 or meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);~~

~~(g) the claimant meets the requirements for cancellation established under the provisions for combined wage claims; or~~

~~(h) the claimant has filed a UCX claim, unemployment compensation for ex-military, and it is determined he does not have wage credits under Title 5, chapter 85, U.S. Code.~~

R994-403-103f. Monetary Eligibility Requirements--General Definition.

Generally, claimants must have earned base period wages of 1 and 1/2 times the high quarter wages plus a minimum dollar amount. If the claimant is not monetarily eligible under the 1 and 1/2 times requirement, but meets the monetary base period wage requirement as defined in Section 35A-4-202 of the Act, the claimant may establish that he was paid wages for the insured work in at least 20 weeks during the base period with earnings of not less than 5 percent of the monetary base period requirement for each week. The requirement in the Act that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in Section R994-401-204.

(1) Timeliness.

To preserve the original effective date of the claim, the claimant will have 10 days from the date of the notice of "Determination of Benefit Amount" plus five days if the determination is mailed, to make a written request for revision and to show that he has 1 and 1/2 times the base period wages or meets the alternative requirement of monetary eligibility consistent with Section R994-401-204. If a timely protest is not made, the claimant must establish good cause for failing to request a monetary determination recomputation within these time limitations to have the monetary determination recomputed or establish eligibility for a recomputation as provided by R994-406-305. If good cause cannot be shown, the claim will become effective on the Sunday of the week in which a new claim is filed and the claimant is able to show eligibility under the 20 week standard.

(2) Monetary Base Period.

The monetary base period wage is established by the Department for each calendar year. The Department publishes that amount in the Benefit Schedule which is given to claimants when they file an initial claim. The calculation is made in accordance with Section 35A-4-202 of the Act. The dollar amount for each of the 20 weeks required to establish eligibility will be determined by the calendar year in which the initial claim is filed.

(3) Claimant Responsibility.

When the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, it becomes the claimant's responsibility to show that he has 20 weeks of covered employment which meet the minimum dollar amount.

(4) Acceptable Proof of 20 Weeks of Covered Employment.

Acceptable proof shall include:

(a) Appropriately dated check stubs issued by the employer;

(b) A written statement from the employer showing dates of employment and the amount of earnings for each week;

(c) Time cards;

(d) Canceled payroll checks; or

(e) Personal or business records kept in the normal course of employment that would substantiate work and earnings.

R994-403-104a. Closing a Claim.

(1) A claim for benefits may be considered "closed" when a claimant:

(a) reports he is permanently back to work,

(b) is denied benefits for more than one week,

(c) discontinues filing weekly claims,

(d) reports relocation to an area served by a different local office,

(e) exhausts his rights under a specific benefit program,

(f) reports four consecutive weeks of earnings in excess of his weekly benefit amount, or

(g) has been notified to provide information and fails to report as instructed.

R994-403-105a. Reopening a Claim.

(1) A claimant may reopen his claim any time during the 52-week period after first filing, by following procedures outlined in Section R994-403-102a. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant reports unless good cause is established for failure to report during a prior week in accordance with Section R994-403-107a.

(2) Proof of identity shall be required when reopening a claim as prescribed under Subsection R994-403-102a(3).

R994-403-106a. Filing Weekly Claims.

(1) The claimant is solely responsible for filing weekly claims. To maintain continuing eligibility for benefits an individual shall file weekly claims in person, by mail or by telephone in accordance with instructions from the Department.

(2) Time Limit for Filing Telephone Claims.

Each claim should be filed as soon as possible after the Saturday week ending date. The Department will permit a period of 20 days after the week ending date to file a timely claim by telephone. A telephone claim filed 21 or more calendar days after the week ending date shall be denied unless good cause for late filing is established in accordance with Section R994-403-107a.

(3) Time Limit for Filing Bi-Weekly Claim Cards.

If filing by mail or in person through a local office, each week of the bi-weekly claim card shall be considered separately to determine if it has been filed timely. The card must be received by the Department within 20 days from the week ending date of week one in order for week one to be considered timely. Both week one and week two will be considered late if the bi-weekly card is received by the Department 21 or more calendar days after the week ending date for week two.

(4) When circumstances prevent the preparation of the bi-weekly claim card by the Department prior to the week ending date of week two, the print date of the claim card, rather than the week ending date is then reviewed to determine timeliness. Both week one and week two shall be considered late if received 21 or more calendar days after the print date.

R994-403-107a. Good Cause for Late Filing.

(1) A claimant has the duty to establish, by competent evidence, that good cause existed for not claiming benefits as prescribed. The Department has a responsibility to NOT apply excessive harshness or technicality in determining good cause. Some reasons for the time limitations on filing claims with respect to the claims filing process are:

(a) to pay the first claim in a prompt manner consistent with federal payment standards,

(b) to pay benefits in a sequential manner,

(c) to monitor the claim for potential violations of eligibility requirements, or

(d) to allow a claimant to correctly respond to the questions on his claim with respect to the week for which the claim is filed.

(2) Good cause for late filing will generally be established by evidence a claimant was prevented from filing a timely claim. The proof of inability to properly file may establish unavailability for

~~work. Some examples that may establish good cause for late filing but may raise an availability issue are:~~

~~(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed,~~

~~(b) hospitalization or incarceration,~~

~~(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim, and~~

~~(d) failure of the Department to discharge its responsibilities promptly in connection with a claim.~~

~~(3) Some examples of reasons for late filing that may NOT be considered good cause are:~~

~~(a) failure to affix correct postage or otherwise properly mail the claim, including placing for mailing somewhere other than in an approved Postal Service mail box or mail drop,~~

~~(b) failure to mail the claim far enough in advance to reasonably insure delivery to the Department within the allowable time frame,~~

~~(c) delegation of the mailing or filing responsibility to another person,~~

~~(d) procrastination for non-compelling reasons,~~

~~(e) misplacing the claim, the claim filing telephone number or Personal Identification Number (PIN),~~

~~(f) vacation,~~

~~(g) temporary or minor illness,~~

~~(h) transportation problems,~~

~~(i) failure to notify the Department of the proper name, address or an address change, and~~

~~(j) failure to properly label a personal mail box to insure mail delivery, and~~

~~(k) reliance upon inaccurate advice from friends, relatives, other claimants or similar sources as the Department is, and shall remain, the only acceptable source of information about unemployment insurance.~~

~~R994-403-108a. Time Limitation on Backdating.~~

~~No claim may be backdated if filed over 65 weeks following the date of separation.~~

~~R994-403-109b. Registration, Workshops, Deferrals -General Definition.~~

~~(1) A claimant shall register for work at an Employment Center unless, at the discretion of the Department, registration is waived or deferred. Thereafter, he must continue to report, as required by the Department.~~

~~(2) Failure, without good cause, to register for work or to report to the Department, when required, may result in a denial of benefits. Good cause for failure to register for work or to report to the Department when required will be established by evidence that the claimant was prevented from registering or reporting. The proof of inability to register or report may raise an availability issue.~~

~~R994-403-110b. Job Search Workshops and Conferences.~~

~~The Department may require attendance at special conferences or workshops designed to assist claimants with job seeking skills, developing resumes, telephone usage, personal interviewing techniques, and other, necessary skills. Failure, without good cause, to participate in a Job Search Workshop or other required conference may result in a denial of benefits in accordance with Section R994-403-109b. The denial will begin with the week the claimant failed to attend the workshop or conference and ends with the week he contacts the Department and schedules an appointment to attend the next available session.~~

~~R994-403-111b. Deferral of Work Application.~~

~~(1) The Department may elect to defer the work registration requirement. If a claimant is placed in a deferred status, he is not required to actively seek work, but must meet all other availability requirements of the Act. Employers shall be notified when former employees filing for benefits are not required to seek work with other employers. Deferrals are generally limited to the following circumstances:~~

~~(a) Labor Disputes.~~

~~If a claimant is unemployed due to a labor dispute, he may have his work application deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, he must register for work immediately.~~

~~(b) Union Attachment.~~

~~If a claimant is a union member in good standing, is on the out of work list or otherwise eligible for referral to union work and has received substantially all his base period employment through the union, he may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate he has a reasonable expectation of obtaining employment through the union.~~

~~(c) Employer Attachment.~~

~~If a claimant is attached to a regular employer with a definite date of recall, he may have his work registration deferred to the date of recall. However, the deferral should not extend beyond the mid-point of a claim or for more than ten weeks.~~

~~(d) Three Week Deferral.~~

~~A claimant who obtains an offer of full-time work to begin on a definite date within three weeks, shall be deferred for that period.~~

~~(e) Seasonal.~~

~~A claimant may be deferred when, due to seasonal factors, work is not available in his established, base period occupation, if other suitable work is not available in the area.~~

~~R994-403-112b. Four Week Delayed Work Registration.~~

~~A new claimant may be given the option, at the discretion of the Department, to delay completion of the department's work application until the fifth consecutive week of filing. However, claimants are required to actively seek work each week. A claimant who wishes to complete a work application when filing a new claim may do so. A claimant whose work application is not otherwise deferred, must register for work during the fifth week of eligibility.~~

~~R994-403-113b. Not Eligible for Deferral.~~

~~There are specific groups of claimants who may not have their work applications deferred. Claimants who are filing for special federal benefits that require a work search are not eligible for deferrals unless Department approval for training has been granted.~~

~~R994-403-114b. Profiled Claimants.~~

~~(1) Individuals who are likely to exhaust unemployment benefits will be identified through a profiling system and required to participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.~~

~~(2) To be excused from reemployment services, the claimant must show:~~

(a) that he has completed equivalent services within the twelve month period immediately preceding the date he is scheduled for reemployment services; or

(b) that he had justifiable cause for not participating in reemployment services. Justifiable cause is established if the claimant's failure to participate is reasonable for the circumstance or beyond his control.

(3) Failure to participate in reemployment services without justifiable cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week he contacts the Employment Center to arrange participation in the required reemployment service.

(4) A claimant who fails to participate in reemployment services will have his availability for work evaluated under the rules of Subsection 35A-4-403(1)(c).

R994-403-115c. Able and Available - General Definition.

The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other criteria established for eligibility but, if he cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed. A principal requirement of the Employment Security Act is that the claimant must be attached to the labor force. This means the claimant can have no encumbrances to immediate acceptance of full-time work. He must be actively engaged in efforts to obtain employment. He must have the necessary means to become employed including tools, transportation, licenses, and child care. He must desire to obtain employment. The main reason for his continued unemployment must be the lack of suitable job opportunities. There is a presumption of non-availability when an individual voluntarily leaves work, has physical or mental restrictions, or is otherwise responsible for becoming or remaining unemployed. The only exception to the requirement to be available for, actively seeking and able to accept work is established under Subsections 35A-4-403(2)(a)and 35A-4-403(2)(b) for Department Approval, which defines availability for those in approved schooling in other terms.

R994-403-116c. Able.

(1) Physical or Mental Impairments.

The claimant has the responsibility to show that he has no physical or mental impairments which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his last employment, there is a presumption of inability to work which must be overcome by competent evidence that there is some reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(a) Past Work History.

If an individual earned his base period wages while working with a physical or mental impairment, and is otherwise eligible, and is willing to accept any work within his ability and is actively seeking that work, his unemployment is due to lack of employment opportunities and not due to inability to work. Under these circumstances, benefits should not be denied solely on the basis of the physical or mental disability.

(b) Medical Verification.

When an individual has a physical or mental impairment, medical information from a health care specialist is one form of evidence used to determine the claimant's ability to work. The competent specialist's recommendations are presumed to be accurate with regard to the claimant's ability to work; however, the claimant may overcome the opinions of specialists by showing other evidence that the impairment does not interfere with ability to work. If the claimant is not currently under professional care, verification may not be required.

(2) Temporary Disability.

A claimant's ability to work may be affected any time there is an illness or injury that is expected to continue for a short period of time.

(a) Medical Absence from Work.

A claimant is not eligible for benefits if he is not able to work at his regular job due to a temporary disability provided the employer has agreed to allow him to return to his job when he is able to do the work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work he is capable of performing with his disability.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he is again able to work, or his temporary disability occurred after he became unemployed, benefits may be allowed even though he cannot work in his regular occupation provided he can show there is work he is capable of performing, and for which he reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(3) Hospitalization.

While a claimant is hospitalized, he is not able to work unless the hospitalization is on an out-patient or residency basis and there is professional verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation or adjustment.

(4) Workers' Compensation.

(a) Compensation for Lost Wages.

A "Temporary Total" award of workers' compensation is made initially to replace lost wages based on a conclusion that the individual is unable to work. If the claimant has been granted an award based on his contention or medical verification that he is unable to work, eligibility for unemployment insurance benefits cannot be established. When the claimant is no longer entitled to a Temporary Total award he must file his unemployment insurance claim within 90 days after he is released for work to establish a claim using wage credits earned prior to the injury. Section 35A-4-404 details claimant eligibility for benefits after receiving workers' compensation or occupational disease compensation. He will not be considered able to work without a medical release or other evidence that he is able to perform full-time work.

(b) Subsequent Awards.

The worker may subsequently receive a "permanent partial" or "permanent total" award under the state workers' compensation laws. A claimant may be eligible for unemployment insurance benefits while receiving an award if he can show he is able and available to perform any full-time work which he reasonably could expect to obtain even though he has a physical or mental impairment. However, the receipt of such an award may raise a presumption of non-availability, which is determined consistent with the preceding provisions dealing with physical or mental impairments. Disability

payments are not reportable as wages under Subsection 35A-4-401(3).

R994-403-117c. Available.

(1) General Requirement.

The primary obligation of a claimant is to be available for full-time work. Any restrictions on availability, whether self-imposed or beyond the control of the claimant, lessen his opportunities to obtain or accept suitable work. When a claimant was recently employed under restrictive conditions and is unemployed for some other reason, the claimant shall initially be considered available without regard to that restriction. However, a claimant cannot continue to restrict his availability to certain hours, types of work, rate of pay, or conditions not usual or customary in his occupation, trade, or industry and still maintain his eligibility for benefits. The claimant must be available for any work which meets the suitable work test as defined in Subsection 35A-4-405(3) and Section R994-405-309.

(a) Requirement for Modification of Restrictions.

The number of weeks permitted before restrictions, beyond what is customary for the occupation, must be modified will depend upon: prospects of employment, severity or number of restrictions, extent of work search efforts, and the average time required to become reemployed considering the entire labor market and the specific occupation. Other types of restrictions which could interfere with reemployment include residence outside the normal service area of an Employment Center, lack of transportation, domestic problems, school attendance, military obligations, church or civic activities. When modifications of restrictions are required, the claimant shall be expected to contact employers and make work applications consistent with the modifications to enhance employability. Necessary changes will also be made on his Employment Center work application to facilitate referrals to prospective employers.

(i) At least four weeks shall be allowed during which the claimant may restrict his availability to work consistent with the base period employment which was most advantageous to him before modifications of restrictions would be required. During the fifth week of the claim, if a restriction contributes in any way to the continuing unemployment, the claimant shall be advised by a Department representative that he has restrictions that reduce his chances of becoming employed and adjustments will be required to maintain eligibility. Failure to follow reasonable advice from the representative may result in a conclusion of non-availability.

(ii) The maximum number of consecutive weeks that a claimant may be eligible for benefits while having restrictions, beyond those customary in the occupation, shall be half the number of weeks of his claim.

(2) How Use of Time Affects Eligibility.

A claimant cannot be considered as meeting the requirement of being available for work if he is involved in any activity which precludes acceptance of employment. It is not the intent of the Act to subsidize vacations, personal pursuits, no matter how compelling, or other leisure time activities that would in any material way interfere with immediate reemployment. While it is not expected that a claimant will be confined to his home or telephone at times not actually engaged in work seeking activities, a claimant shall not be considered available for work if he is precluded for any reason from accepting work. Examples of activities which preclude a claimant from accepting work include: absence from the area where he is living or willing to accept employment, hospitalization, illness, incarceration, vacation, time spent in conjunction with funerals or other family gatherings, or time spent on any activity which cannot be immediately abandoned or interrupted to seek and accept work.

(a) Rebuttable Denial of Benefits.

Any activity which occupies the claimant for more than 24 consecutive hours during his normal working days, shall be presumed to adversely affect the claimant's opportunities to seek and accept employment and therefore he shall be determined ineligible for benefits. Days customarily worked in the claimant's occupation includes as appropriate, weekends and holidays, or business days which are Monday through Friday. Activities which may adversely affect opportunities to obtain employment include travel, incarceration, illness, hospitalization, self-employment, civic or church activities, or any other leisure time activity that would interfere with immediate reemployment. This presumption can be overcome by a showing that the activity did not preclude offers of work, referrals to work, contacts from an Employment Center, or an active search for work. For example, if the claimant had been in contact with an employer and was told that he would be called, it must be presumed that if the claimant was absent from his residence beyond what is usual for daily activities, he may have missed an offer of work. Unless the employer verifies that no attempt was made to contact the claimant, benefits will be denied. However, when a claimant is away from his residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of non-availability may be overcome. The conclusion of non-availability may also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

If it is necessary to travel to seek work, the travel is not delayed and primarily for the purpose of applying for or accepting a job, such travel shall not result in a denial of benefits regardless of the number of days required for the trip.

(ii) Definite Offer of Work or Recall.

If the claimant already had, or obtained a definite offer of full-time employment or date of recall to begin within three weeks, he has demonstrated his attachment to the labor market and accomplished the purpose of the work search. Therefore, he does not have to demonstrate further availability provided there is no reasonable expectation that the date of hire will be changed. He is no longer required to seek other work. Therefore, in this limited circumstance, if being away for short periods of time or otherwise removing himself from the labor market does not adversely affect his reemployment, benefits may be allowed provided he has made arrangements to be contacted. Benefits shall nevertheless be denied for a week of substantial illness or hospitalization because the statute requires that a claimant be able to work.

(iii) Jury Duty or When Court Attendance is Required.

If a claimant is not available to seek or accept work because he is before any court due to a lawfully issued summons where he is neither a defendant or a plaintiff, or his presence is required by the court for jury duty, he will not be denied benefits. Since jury service or court attendance is a public duty required by law, an otherwise eligible claimant will be considered available for work unless he has employment which he is unable to continue because of his court duties, or is offered available, suitable employment, which he refuses or delays because of his court service. The time spent in court service is not a personal service performed under a contract of hire in an employment situation; therefore, even though it involves an individual's full time, he is not considered employed.

(b) Non-Rebuttable Denial of Benefits.

(i) Refusal of Work.

A claimant generally demonstrates that he is not available for work if there is any suitable work he does not or cannot accept. If he was not available for work, even though he had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work could have been performed. Benefits would also be denied when a claimant fails to be available for job referrals or a call to work under reasonable conditions consistent with a previously established work relationship. Examples of when this would apply include referral attempts from: a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because he was not able or available to do his work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during his last week of employment and he was not paid for the day(s) of absence, benefits will be denied for that week. The claimant will be denied benefits under this Section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

To meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week, but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Full-Time Work for Permanently Disabled Claimants.

If a claimant has an actual physical limitation and therefore is available for less than the customary full-time hours of work, all of the following circumstances would have to be met before the claimant could be considered available for work as required for eligibility:

(i) The claimant must be able to work, but must have an actual involuntary physical limitation. There must be substantial evidence of the nature, duration, prognosis and severity of the medical limitation to establish that it clearly leaves the claimant incapable of customary full-time hours of work. A limitation of hours caused by other than physical limitation may not be considered; and

(ii) The prior work must have been substantial in amount but part-time, at least throughout the claimant's base period. "Substantial" is defined as over 50 percent of the hours customarily worked in the occupation. It must have been part-time because of the physical limitations as described in the preceding paragraph; and

(iii) An active local market of employment must exist for workers in claimant's occupation under the conditions within which the claimant is capable of working; and

(iv) The claimant must be making a current active personal search for work.

(c) Other Than Normal Working Hours.

If the claimant worked for an employer under other than normal working hours and the adjustment was made to accommodate the peculiar circumstances of the claimant, availability for normal full-time work as defined for the industry is not established, even though the hours previously worked by the claimant may have been 40 or more.

(4) Wage Restrictions.

(a) No claimant will be expected as a condition of eligibility to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than wages prevailing for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself to a wage that clearly is not available. The following are the limits that a claimant may place on his wage demands while maintaining eligibility:

(i) At the initial time of filing the claimant may not restrict his wage requirements to an amount greater than the highest wage earned during his base period or the highest wage available in the locality, whichever is lower, and there must be some reasonable expectation that work can be obtained at that wage.

(ii) After four consecutive weeks of filing the claimant may be instructed by a Department representative that he must be available for any wage earned during the base period of the claim, if the highest wage earned during the base period is not reasonably available.

(iii) When the claimant has been filing continuously for a period of time equal to 1/3 of the maximum number of weeks of his entitlement, he cannot require a wage higher than the lowest wage he earned during his base period.

(iv) After filing continuously for 1/2 of his weeks of entitlement, he must be willing to accept a 10% reduction from the lowest base period wage if his wage requirement is higher than the prevailing wage for his occupation because it shall be concluded that his continued unemployment is at least in part due to his wage demand. He must also gradually make additional reductions in his wage demand as necessary to reach a wage demand equal to the prevailing rate for similar work in the locality by the time he has filed continuously for 2/3 of his weeks of entitlement.

(v) After filing continuously for 2/3 of his weeks of entitlement, a claimant must be willing to accept the prevailing wage for similar work in the locality.

(vi) When a claimant reopens a claim after employment, he must be willing to accept the wage last earned and make additional reductions as required after continuous weeks of filing. If the claimant has had intervening employment at the higher wage, the wage reductions will not be required until he has received those portions of his benefits in consecutive weeks of filing.

(b) Evidence of the claimant's compliance with this requirement will be shown by the wage the claimant indicates as acceptable on work applications when applying for work with prospective employers, or on work applications with Employment Centers.

(c) Exception for Deferred Claimants.

The provisions of this section shall not apply to those claimants who qualify for deferrals as explained in the Subsection 35A-4-403(1)(b) and R994-403-203.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant to preserve his highest skill by providing an income during a period of unemployment during which the claimant can seek work similar to that which he had prior to becoming unemployed. A skill is defined as a marketable ability which was developed over an extended period of time by training or experience that could be lost if not used. It is not the intent of the program to subsidize individuals who wish to improve their employment status. The following are the limits that a claimant may place on the type of work he is willing to accept and maintain eligibility:

(i) At the time of filing an initial claim or reopening a claim following employment, a claimant may restrict his availability to the highest skilled employment performed during his base period provided he has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with that performed during the base period must show some compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has filed continuously for 1/3 of his weeks of entitlement, a claimant shall not be eligible for benefits unless he is willing to accept work in all the occupations in which he worked during the base period of his claim. However, the Department representative may advise the claimant after four consecutive weeks of continuous filing that his work search needs to be expanded to include other base period occupations.

(iii) After the claimant has filed continuously for 2/3 of the weeks of his entitlement, availability is not demonstrated unless the claimant is willing to accept work in other occupations that he is reasonably fitted to perform by past experience or training or to which his skills could logically be transferred.

(b) Contract Obligation.

If a claimant is restricted due to a contract obligation with a former employer from competition with or acceptance of employment in the claimant's regular occupation, the claimant would not be eligible for benefits unless he can show that there is another occupation for which he has sufficient skills or training in which he could reasonably obtain employment, and he is actively seeking that type of work.

(c) Restriction to Former Employer.

If a claimant is not willing to consider or accept work except with a former employer and does not have a definite date of recall within the period of time during which a deferral could be granted in accordance with Subsection 35A-4-403(1)(b) or Section R994-403-203 he cannot be considered available for work. One indication of the claimant's restriction to a former employer is a failure to actively seek other permanent employment. However, the claimant may be eligible for benefits even though he chooses to remain available for recall to a former employer and does not qualify for a deferral if he is actively seeking temporary work which he reasonably could obtain. Such temporary work may have to be in a different occupation and at a lower rate of pay. Therefore, the claimant will have to make such adjustments in his attitudes and on work applications to establish eligibility.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment customarily required for the type of work he wants to obtain, the claimant cannot be considered available for work unless there are other types of work which he is actively seeking and has a reasonable expectation of obtaining, based on his skills and abilities.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept, and is actively seeking temporary work. The claimant must also show there is a realistic expectation that the type of work sought is available on a short-term basis. A claimant may have to accept work in another occupation if short term employment is not customary in his regular occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must be available and willing to commute within reasonable commuting patterns for his occupation and community. The claimant must show that he has reasonable access to transportation, whether public or private. Acceptable means of transportation include: walking, bicycling, public busses, taxis, private vehicles including motor bikes and scooters, riding with friends, relatives, co-workers or in car pools. If the claimant used means other than private transportation in order to earn wage credits, availability is established for as long as there exists a labor market available to the claimant within his ability and willingness to commute.

(b) Removal to a Locality of Limited Work Opportunities.

The individual who moves from an area of substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which he is qualified and willing to perform. If the work which the claimant can and will perform is so limited in the new locale that he has little expectation of becoming reemployed, his continued unemployment is the result of the move and not the failure of the labor market to provide opportunities for employment. Once this has been established, after the claimant has had an opportunity to explore the labor market, he is no longer eligible for benefits because he has removed himself from the labor market. If a claimant moves to an area where there is no work which the claimant can do, benefits shall be denied immediately.

(9) Retirement.

(a) When a claimant is retired there is a presumption of withdrawal from the labor market, regardless of the reason for the retirement, because a retired claimant may have fewer incentives to work than other claimants. Circumstances which cause a presumption that a retired individual lacks attachment to the work force are:

(i) income sufficient to meet financial requirements,

(ii) income or retirement penalties which motivate against substantial employment,

(iii) intended uses of leisure time including hobbies, travel, civic or church responsibilities,

(iv) the absence of a plan and program for becoming employed consistent with realistic opportunities for employment of a retired individual,

(v) personal circumstances of the claimant's spouse,

(vi) health,

(vii) consistency, intensity, and reasonableness of efforts to obtain work.

(b) If the retired claimant can show by his actions that he is genuinely interested in obtaining employment and he is actively seeking work, benefits may be allowed provided he meets other requirements for eligibility.

(10) Other Restrictions.

(a) School.

A claimant attending school who has not been granted "Department approval" must meet all requirements with respect to being able, available and actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his efforts to secure full-time work.

If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his school schedule, if necessary, to accept work, must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he were to withdraw.

A presumption of non-availability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which he could reasonably expect to obtain.

(i) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. An age certification issued by the school merely gives correct age, not authority to work. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(A) During school hours except as authorized by the proper school authorities,

(B) Before or after school in excess of 4 hours a day,

(C) Before 5:00 a.m. or after 9:30 p.m. on days preceding school days,

(D) In excess of 8 hours in any 24 hour period,

(E) More than 40 hours in any week.

(b) Domestic Obligations.

(i) When a claimant has an obligation to care for children or other dependents, he must show that other arrangements for the care of those individuals has been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

(ii) Following childbirth, there is a period of time when the need or desire to care for the newborn infant is stronger than the desire or need to work. Since an infant cannot be left without proper supervision, it is presumed that the mother has the obligation to care for the infant and she is not available for work until arrangements are made for the child's care. A re-entry into the labor market is not established until the claimant has indicated a desire to re-enter the labor market by making all necessary physical and mental adjustments, and other arrangements, to enable her to work and she has demonstrated this by beginning a good faith, active search for work. The claimant must also be willing to accept work at a wage consistent with Subsection R994-403-117e(4), even though faced with additional child care expenses.

R994-403-118c. Work Search.

(1) General Requirements.

The Employment Security Act requires, by direct statutory language, that a claimant must act in good faith in an active effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community. As an example, it may not be appropriate for professionals to call in person upon prospective employers without first submitting resumes and making an appointment by phone. However, in the case of a non-professional, unannounced personal contacts may be appropriate.

(2) Active.

An active effort to look for work is generally interpreted to mean that a claimant should contact a minimum of two employers not previously contacted each week who would hire people in the occupation which the claimant has work experience or would otherwise be qualified and willing to accept employment. Although the minimum number of contacts required by the Department without specific instructions is two, individuals genuinely desirous of obtaining employment will generally make a work search in excess of the minimum requirement. Because the primary obligation of the claimant is to become re-employed, not merely to comply with the requirements of the Department, claimants are encouraged to develop a realistic plan for becoming re-employed which may mean making more than the minimum number of contacts. However, Department representatives, after taking into consideration the type of work the claimant is seeking and the opportunities available for contacting employers who could reasonably be expected to hire in those occupations, may individually advise claimants of a specific number of contacts the claimant is expected to make each week. The Department may not assign varying number or types of contacts for claimants in the same occupation or locality, as work search requirements should be consistent for all claimants in similar occupations unless unique circumstances warrant a reduction in the requirement. Failure of a claimant to make at least the minimum number of contacts as instructed by a Department representative shall create a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he has pursued a job development action that would be at least as likely to result in employment as the specific minimum number of employer contacts given him by the Department representative.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if sincerely desirous of obtaining employment. A good faith effort is not established simply by making a specific number of contacts to satisfy the Department requirement. A good faith effort requires that the claimant, when contacting employers, emphasize his interest in the job and conduct himself in such a way as to provide the maximum possibility of his being considered for hire. He should contact employers at the designated time, place and in the manner specified. He should be dressed and groomed appropriate for type of work he is seeking and present no unreasonable restriction on acceptance of the work. Answers on employment applications should be reasonable, honest, show a genuine interest in obtaining employment, and emphasize those skills, experience or aptitudes which the claimant has that are consistent with the job requirements. Contacts should be made directly with persons having the authority to hire.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b). When a claimant is deferred, it is because he has reasonable prospects of employment through the union and his union attachment puts him in contact with the majority of the employers he normally would be expected to contact. Therefore, for those claimants who meet the qualification for deferral, the union attachment is an acceptable substitute for a personal work search.

~~(b) If the claimant is not in a deferred status because he did not earn substantially all his wage credits in employment as a union member or the deferral has ended, he must meet the requirements of an active, good faith search for work by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting non-union employment.~~

~~R994-403-119e. Extended Benefit Requirements.~~

~~Extended benefits are those additional benefits paid in times of high unemployment. Claimants filing for extended benefits established under specific state or federal programs are required to be available under different conditions and make a more extensive work search effort than is required of claimants receiving regular program benefits. Disqualification for failure to meet the work search requirements are made in accordance with extended benefit rules established under Sections 35A-4-402 and R994-402-201 through R994-403-113. Other special programs may be governed by various sections of the Act or federal public laws.~~

~~R994-403-120e. Burden of Proof.~~

~~Proof of eligibility for benefits is the responsibility of the claimant. The claimant has an obligation to report any information that might affect his eligibility and provide any information requested by the Department which is required to establish that he is able, available, and actively seeking work. He must keep a detailed record of the employers contacted each week for which benefits are claimed. The records will include the company name, address and telephone number, date of contact, type of work, name of the person contacted, and the results of the contact.~~

~~R994-403-121e. Period of Ineligibility.~~

~~(1) Eligibility for benefits is established on a weekly basis. When the claimant has demonstrated that he is not able or available for work or actively seeking work, there may be a presumption that the circumstances will continue and an indefinite disqualification may be assessed. This disqualification shall end when the claimant establishes that conditions have changed and he meets the requirements for eligibility. A claimant may have his eligibility under Subsection 35A-4-403(1)(c) of the Act reconsidered on a weekly basis by reporting to the local office and requesting a reassessment of his eligibility following a disqualification.~~

~~(2) If lack of a good faith work search is established with regard to prior weeks, a disqualification will be for only the weeks in which the work search was inadequate and not in excess of four weeks preceding the interview unless benefits were allowed on the basis of false reports by the claimant of work search contacts. The Department shall disqualify all weeks in which it is discovered that a claimant was not able or available to accept work without regard to the four-week limitation.~~

~~R994-403-122e. Failure to Furnish Information.~~

~~Fundamental to the proper administration of the Unemployment Insurance Program is the gathering and exchange of information. When a claimant or employer cannot or will not provide information, proper determinations with regard to the claimant's eligibility cannot be made. The failure of the claimant to provide information may come at various times during the benefit year, and to avoid improper payments, benefits must be denied under Subsection 35A-4-403(e) until the information is provided. Where time limitations are not prescribed by law, the claimant and employer must be allowed a reasonable amount of time to provide the information requested by the Department.~~

~~R994-403-123e. Period of Disqualification.~~

~~For failure to provide wage or separation information or any other information identified at the initial filing of the claim, the disqualification period begins with the effective date of the claim. All other denials will begin with the week in which the allotted time for responding ends. In all cases, the disqualification will continue until the Saturday of the week prior to the week in which the claimant provides the information or contacts the Department to make arrangements to provide the information, whichever is first.~~

~~R994-403-124e. Good Cause.~~

~~No disqualification or penalty will be assessed under this provision of the law if the claimant or employer can show good cause for failing to provide the information within the time-frame as requested. Good cause, as it applies to this section of the law, may be established if the claimant or employer makes reasonable attempts to provide the information within the time-frame requested, or the claimant or employer was prevented from complying due to circumstances which were compelling or beyond their control.~~

~~R994-403-125e. Information Claimants Must Provide.~~

~~(1) Utah law requires that the claimant's weekly benefit amount be computed based upon his total wages for insured work during his base period. The wage information must be requested from employers based on the employment reported by the claimant. The claimant has failed to provide information necessary to establish his claim if he does not list all base period employers and provide the correct business name and address for each employer listed. If, after being found monetarily ineligible, he subsequently identifies sufficient additional employment to establish a claim, the monetary determination will be revised to include the additional employment and benefits may be allowed under Subsection R994-403-125e(2) after the disqualification period.~~

~~(2) Claimants must provide information which is needed to determine eligibility as requested on the initial claim form, or on any other official document of the Department. Claimants are required to correctly report the reasons for separation from past employers when filing a new claim, reopening a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation. Information with regard to work search and other availability restrictions may be requested by the Department on a regular basis. Claimants may be required to provide documentary information, including medical reports, class schedules and school grades.~~

~~(3) Benefits may also be denied when claimants fail to report at the time and place designated for an in-person interview with a Department representative which is necessary to determine claimant eligibility or make job referrals.~~

~~R994-403-126e. Wage Information.~~

~~It is the employer's responsibility to report correct wage information. The claimant may be requested to supply wage information. However, since it is not the claimant's responsibility to report wage information, no disqualification will be assessed for failure to do so under Subsection 35A-4-403(1)(e).~~

R994-403-127e. Reporting Incorrect Information.

Providing incomplete or incorrect information shall be treated the same as a failure to provide information if the incorrect information results in an improper decision with regard to the claimant's monetary or non-monetary eligibility. This includes failure to report or list all work search contacts as requested at eligibility interviews or on written documents.

R994-403-128e. Overpayments.

If benefits have been improperly allowed based on the claimant's failure to provide information, or based on incorrect information provided by the claimant, the resultant overpayment may be assessed in accordance with Subsection 35A-4-406(4).

R994-403-129e. Employer Penalty.

If the employer fails to provide wage information as requested on Form 625, or separation information as requested on Form 606, he relinquishes his rights with regard to the affected claim and ceases to be an interested party with respect to that claim. The employer may raise questions concerning the claimant's eligibility with the Department which may then choose to exercise continuing jurisdiction with respect to the claim, under Subsection 35A-4-406(2). The Department may subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. The employer will not be eligible to appeal decisions with regard to the claimant's right to benefits and relief of charges resulting from payments to that claimant will not be granted. However, if the Department exercises continuing jurisdiction and denies benefits, any overpayment established and collected will be credited to the employer's benefit ratio account.

R994-403-131g. Eligibility for Benefits and Requalifying Wages - General Definition.

When establishing a new claim, a claimant may have unused wage credits sufficient to establish monetary elibibility for a subsequent claim. However, before benefits may be paid on the subsequent claim, a claimant who has received during the first benefit year must have worked since the beginning of that benefit year.

R994-403-132g. Subsequent Employment in Insured Work.

Each of the following three elements must be satisfied to meet the requirements of Subsection 35A-4-403(1)(g):

(1) Work must have been performed after the effective date of the original claim, but not necessarily during the benefit year of the original claim.

(2) Actual services must have been performed, not just the establishment of insured wages attributable to a period of time subsequent to the effective date of the original claim including vacation, severance pay, or a bonus.

(3) Earnings from insured work must be equal to at least six times the weekly benefit amount of the original or subsequent claim, whichever is lower. Insured work is employment subject to state or federal unemployment insurance programs, including railroad employment and active military duty. Active military duty includes any duty authorized by military orders, even if insufficient to monetarily qualify an ex-service member for a claim totally based on military wages.

R994-403-133g. Period of Disqualification.

(1) If a claimant satisfies the requirements of monetary eligibility under Subsection 35A-4-403(1)(f) he may establish a new claim. However, benefits shall be denied under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of insured earnings equal to at least six times his weekly benefit amount.

(2) Exception to Disqualification

The provisions of Subsection 35A-4-403(1)(f), do not apply unless the claimant actually received benefits during the original benefit year.

R994-403-201. Department Approval - General Definition.

Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. The Employment Security Act limits the extent to which unemployment funds may be expended on behalf of claimants who need training. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

R994-403-202. Request for Department Approval.

Department approval shall not be granted unless a claimant would be disqualified under Subsection 35A-4-403(1)(c) due to school attendance. After it has been determined the claimant's school attendance is disqualifying under Subsection 35A-4-403(1)(c) he must submit a written request before Department approval shall be considered.

R994-403-203. Availability Requirements.

If Department approval is granted, the Act provides relief from the requirement to seek and accept work after the training begins. A claimant must make a work search prior to the onset of training, even if he has been advised that the training has been approved. However, a claimant shall not be required to conduct an active work search each week while in school or during the break period between successive terms as long as that break period is four weeks or less. A claimant attending approved schooling shall be placed in a deferred status and shall not be required to register for work. In addition, benefits shall not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the Act. Absences from school shall not result in a denial of Department approval if a claimant can demonstrate he is making up any missed work and is still making satisfactory progress in school. For the purposes of the subsection, satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing or certification, as appropriate.

(1) A disqualification under Subsection 35A-4-403(2)(a) shall be effective with the week the claimant knew or should have known he was not going to receive a passing grade in any of his classes or was otherwise not making satisfactory progress in school. The Department shall instruct the claimant at the time Department approval is granted that it is his responsibility to immediately report

~~any information that may indicate a failure to maintain satisfactory progress. This includes incomplete work, unsatisfactory test scores and mid-term grades. A claimant also has the responsibility to report any sickness, injury or other circumstances that prevented him from attending school. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status, as defined by the educational institution, shall not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, he is again attending class regularly and making satisfactory progress.~~

~~(2) A claimant shall be ineligible for Department approval if he is retaking a class that was originally taken while he was receiving benefits under Department approval. However, if Department approval was denied during the time the course being taken was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate he is making satisfactory progress.~~

~~R994-403-204. Qualifying Elements.~~

~~All of the following elements must be satisfied for a claimant to qualify for Department approval of training:~~

~~(1) The claimant's unemployment is chronic or persistent due to ANY ONE of the following three circumstances:~~

~~(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:~~

~~(i) Has a history of repeated unemployment attributable to lack of skills,~~

~~(ii) has no recent history of employment earning a wage substantially above the federal minimum wage,~~

~~(iii) has had no formal training in occupational skills,~~

~~(iv) does not have skills developed over an extended period of time by training or experience, and~~

~~(v) does not have a MARKETABLE degree from an institution of higher learning, or~~

~~(b) A change in the marketability of the claimant's skills has resulted due to new technology, major reductions within an industry, or~~

~~(c) Inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,~~

~~(2) A claimant must have a reasonable expectation for success as demonstrated by:~~

~~(a) an aptitude for and interest in the work he is being trained to perform, or course of study he is pursuing,~~

~~(b) sufficient time and financial resources to complete the training,~~

~~(3) The training is provided by an institution approved by the Department,~~

~~(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.~~

~~(5) The length of time required to complete the training should generally not extend beyond 18 months. However, it is recognized there are special circumstances where a longer course may be essential to achieve the purposes of a particular state or federal program.~~

~~(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters or similar periods of academic training necessary to obtain a degree. However, it is again recognized that due to the particular requirements of a special program, training which is not vocationally oriented may be approved beyond a two term limit.~~

~~(7) A claimant did not leave work to attend school, except as permitted under special state or federal programs, even if the employer required the training for advancement or as a condition of continuing employment,~~

~~(8) The schooling is full-time, as defined by the training facility.~~

~~R994-403-205. Requirements for Continuation.~~

~~Initial approval shall be granted for the school term beginning with the week in which the attendance was reported to the Department. Continued approval may be granted by the Department if the claimant establishes proof of:~~

~~(1) Satisfactory attendance,~~

~~(2) Passing grades,~~

~~(3) Continuance of the same course of study and classes originally approved, and~~

~~(4) Compliance with all other qualifying elements.~~

~~R994-403-206. Waiver of Requirements.~~

~~Exceptions to the Requirements for Department Approval.~~

~~(1) The requirements for Department approval may be waived or modified when required by state or federal law for specific training programs.~~

~~(2) Short Term Training.~~

~~Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-204 if the training is for eight weeks or less. This is intended as a one-time approval and may not be extended.~~]

R994-403-101a. Filing a New Claim.

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday immediately preceding the date the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) Before payment can be made on a subsequent claim using those unused wages, each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify;

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower;

(d) the claimant must have actually received benefits during the preceding benefit year; and

(e) benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the week the claimant failed to comply and ends with the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within a reasonable amount of time.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred

status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause for nonparticipation is established if the claimant can show:

(a) completion of equivalent services within the 12 month period immediately preceding the date the claimant is scheduled for reemployment services; or

(b) that the failure to participate was reasonable or beyond the claimant's control.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(5).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The

claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(3) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(4) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(5) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.

(c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in

the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

A claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work is generally interpreted to mean that each week a claimant should contact a minimum of two employers not previously contacted unless the claimant is otherwise directed by the Department. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. Failure of a claimant to make at least the minimum number of contacts creates a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he or she has pursued a job development plan likely to result in employment. A claimant's job development activities for a specific week should be considered in relation to the claimant's overall work search efforts and the length of the claimant's unemployment. Creating a job development plan and/or writing resumes may be reasonable and acceptable activities during the first few weeks of a claim, but may be insufficient after the claimant has been unemployed for several weeks.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort is not necessarily established simply by making a specific number of contacts to satisfy the Department requirement.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b).

(b) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work;

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility; and

(4) must keep a detailed record of the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks.

(3) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. This includes requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by Department employees.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. A claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer fails to provide information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

(1) If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause, as it applies to this section of the rule, may be established if the claimant or employer:

(a) made reasonable attempts to provide the information within the time frame requested, or

(b) was prevented from complying due to circumstances which were compelling or beyond their control.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following eight elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i) has a history of repeated unemployment attributable to lack of skills;

(ii) has no recent history of employment earning a wage substantially above the federal minimum wage;

(iii) has had no formal training in occupational skills;

(iv) does not have skills developed over an extended period of time by training or experience; and

(v) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

If Department approval is granted, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also

applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved. Benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

KEY: filing deadlines, registration, student eligibility, unemployment compensation
[~~November 4, 2002~~]2004
Notice of Continuation June 27, 2002
35A-4-403(1)

▼ ▼

Workforce Services, Workforce Information and Payment Services
R994-405
Ineligibility for Benefits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27472
FILED: 10/01/2004, 19:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment updates the rules to conform to current practices and the changes in technology and the law.

SUMMARY OF THE RULE OR CHANGE: The Department is in the process of rewriting all of its rules to insure they conform to current practices and the law. Some rules refer to antiquated practices before the advent of telephone claims and computers. Some sections have been moved and or renumbered. It is also hoped that this rewrite is easier to understand and to make the rules consistent. There are no substantive changes to procedure or eligibility contemplated by this rule change. (DAR NOTE: The other rules filed for this issue are: the proposed repeal and reenactment of Rule R994-401 under DAR No. 27469; the proposed amendment to Section R994-201-101 under DAR No. 27470; the proposed repeal and reenactment of Rule R994-403 under DAR No. 27471; and the proposed amendment to Section R994-406-505 under DAR No. 27473.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-4-502(1)(b) and 35A-1-104(4), and Section 35A-4-405

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 amendment 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 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-405. Ineligibility for Benefits.
[~~R994-405-101. Voluntary Leaving - General Information.~~
~~A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work or failing to return to work after a layoff, suspension, or period of absence. Failing to renew an employment contract may also constitute a voluntary separation. Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.~~]
R994-405-101. Voluntary Leaving (Quit) - General Information.
(1) A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work, or failing to return to work after:
(a) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),
(b) a suspension, or
(c) a period of absence initiated by the claimant.
(2) Failing to renew an employment contract may also constitute a voluntary separation.
(3) Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.

[~~R994-405-301. Failure to Apply for or Accept Suitable Work - General Definition.~~
~~(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available the claimant has an obligation to properly apply for and accept offered work.~~

~~R994-405-302. Necessary Elements.~~
~~To assess a disqualification under this section of the statute, the following elements must be established:~~
~~(1) Availability of a Job.~~
~~There must be an actual job opening that the claimant could reasonably expect to obtain.~~
~~(2) Knowledge.~~
~~The claimant must have the opportunity to be informed about the job including the wage, type of work, hours, general location and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.~~
~~(3) Control.~~
~~The failure of the claimant to obtain the employment must be the result of the claimant's:~~
~~(a) failure to accept a referral, or~~
~~(b) failure to properly apply for work, or~~
~~(c) failure to accept work when offered.~~

~~R994-405-303. Provisions for Allowance of Benefits After an Issue is Found to Exist.~~
~~Unemployment insurance benefits shall not be denied under Subsection 35A-4-405(3) if any of the following circumstances exist:~~
~~(1) The job is not suitable, or~~
~~(2) The claimant had good cause for the failure to apply for or accept the job, or~~
~~(3) A disqualification would be contrary to equity and good conscience.~~

~~R994-405-304. Failure to Accept a Referral.~~
~~(1) Definition of a Referral.~~
~~If a claimant is told by a Workforce Services representative about the requirements of a job and is given an opportunity to accept or reject the opportunity to apply for the job, the claimant has been offered a referral.~~
~~(2) Refusal of a Referral.~~
~~A claimant fails to accept a referral when he or she refuses to contact the employer or responds in a negative manner, which prevents or discourages the interviewer from providing the necessary referral information.~~
~~(3) Failure to Respond to a Notice from Workforce Services.~~
~~Failing to respond to a notice to contact Workforce Services for the purpose of being referred to a specific job is the same as refusing a referral for possible employment. If there was a suitable job opening to which the claimant would have been referred, benefits shall be denied unless good cause is established for not responding as directed, or that the elements of equity and good conscience are established. Good cause, as it applies to Subsection 35A-4-405(3),~~

~~shall generally be established if it can be shown the claimant was prevented, due to circumstances beyond the claimant's immediate control, from responding as directed. However, a card properly addressed and properly mailed is presumed to be delivered unless returned by the Postal Service to the sender.~~

~~R994-405-305. Proper Application.~~

~~A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:~~

~~(1) meet with the employer at the designated time and place,~~

~~(2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought, and~~

~~(3) present no unreasonable conditions or restrictions on acceptance of the available work.~~

~~R994-405-306. Failure to Accept an Offer of Work.~~

~~An offer of work may be refused by positive language, or by conduct that would prevent or discourage an offer of work. Work is refused when the claimant unnecessarily emphasizes barriers to accepting employment.~~

~~R994-405-307. Good Cause.~~

~~Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship. Hardship may not be established unless accepting the employment would result in actual or potential physical, mental, economic, personal or professional harm. Good cause for not accepting a job is also established if the elements that establish good cause for quitting a job are present under Subsection 35A-4-405(1) and Section R994-405-102.~~

~~R994-405-308. Equity and Good Conscience.~~

~~A claimant shall not be denied benefits for failing to apply for or accept work if a disqualification would be contrary to equity and good conscience, even though good cause has not been established. The elements necessary to establish eligibility under the equity and good conscience standard are:~~

~~(1) Reasonableness.~~

~~Reasonableness may be established if the claimant is not overly sensitive in determining the suitability of the work and there is some justification or evidence of mitigating circumstances that resulted in the failure to apply for or accept employment. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action.~~

~~(2) Continuing Attachment to the Labor Market.~~

~~The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during and after the week the job in question was available.~~

~~R994-405-309. Suitability of Work.~~

~~The following elements must be considered in determining the suitability of employment: (1) risk to health and safety, (2) religious or moral convictions, (3) physical fitness, (4) prior experience, (5) prior training, (6) prior earnings, (7) length of unemployment, (8) prospects for securing work in customary occupation, (9) distance of the available work from his residence, (10) working conditions. A suitable job shall include work the claimant has done before which would utilize prior knowledge and training or work in an occupation to which the claimant's skills are adaptable. Work that requires illegal activities, that violates state or federal labor laws, or that is vacant due to a labor dispute, shall not be considered suitable.~~

~~(1) Risk to Health and Safety.~~

~~Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.~~

~~(2) Religious or Moral Convictions.~~

~~The work must conflict with honestly held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.~~

~~(3) Physical Fitness.~~

~~The claimant must possess the physical capacity to perform the work. Employment beyond the physical capacity of the claimant is not suitable.~~

~~(4) Prior Experience.~~

~~If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.~~

~~(a) After a claimant has filed continuously for 1/3 of the weeks of entitlement, any job similar to work performed during the base period of the claim is suitable even though it may not utilize the claimant's highest skill level.~~

~~(b) After a claimant has filed continuously for 2/3 of the weeks of entitlement, any work the claimant could reasonably expect to perform based on the claimant's skills, training, and recent employment history becomes suitable.~~

~~(5) Prior Training.~~

~~The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department Approval, or the training was subsidized by another government program.~~

~~(6) Prior Earnings.~~

~~Work is not suitable if the wage is substantially less favorable to the individual than the prevailing wage for similar work in the area, or if it is less than the state or federal minimum wage. The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another area, the prevailing wage is determined by the new area. For the purposes of this subsection, the term "prevailing wage" means the market rate.~~

(a) At the time of filing an initial claim, work paying less than the highest wage earned by the claimant during his base period or the highest wage for that occupation paid in the area, whichever is lower, is not suitable unless the claimant has no real expectation of being able to find work at that wage. After four weeks of continuous filing, a Department representative may advise the claimant that a job paying any wage earned during the base period is suitable, if the highest wage earned during the base period is not reasonably available.

(b) After a claimant has been filing continuously for a period of time equal to 1/3 of the maximum number of weeks of entitlement, any work paying a wage earned during the base period is suitable.

(c) After filing continuously for 1/2 of the weeks of entitlement, work paying a wage 10% less than the lowest wage earned by the claimant during the base period becomes suitable if this wage is higher than the prevailing wage for that occupation. After filing continuously between 1/2 and 2/3 of the claimant's weeks of entitlement, a claimant must gradually reduce the wage demanded until it reaches the prevailing local wage for work in that occupation.

(7) Length of Unemployment.

Whether a job is suitable depends on the length of time the claimant has been unemployed. A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work. However, as the length of unemployment increases the claimant's demands with respect to earnings, working conditions, job duties and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment.

(8) Prospects of Securing Work In Customary Occupation.

(a) Customary work is work similar to the work performed during the claimant's recent employment history. The Department may not require a modification of the claimant's employment restrictions and wage requirements if it can be shown:

(i) the length of unemployment is less than the time normally required to obtain employment in the claimant's customary occupation, and

(ii) there are reasonable prospects for work in that occupation.

(b) A refusal of work shall not result in a denial of benefits if the claimant has obtained a definite date to begin full-time, permanent employment elsewhere within three weeks.

(9) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide transportation within the normal or customary commuting pattern in the area or the failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work.

Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(10) Working Conditions.

Working conditions refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work.

(a) Prevailing Conditions.

If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. The purpose of these conditions is to prevent the unemployment compensation system from exerting downward pressure on existing labor standards. It is not intended to increase wages or improve working conditions, but to prevent any compulsion upon workers, through a denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work.

(b) Similar Work.

The phrase "similar work" used in the statute does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

(c) Prevailing Wage.

For the purposes of this subsection, the term "prevailing wage" means the market rate for the occupation in the area.

(d) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

(e) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout or labor dispute. If a claimant was laid off or furloughed prior to the dispute, and an offer of employment is made after the dispute begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-310. Examples.

(1) Attendance at School or Training Course.

Claimants are expected to seek and accept suitable full-time work even if it would interfere with school or training. Claimants attending school full-time with Department Approval are not required to seek work.

(2) Personal Circumstances.

A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship provided there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not available for work.

(3) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work that meets the Suitable Work Test, Section R994-405-309, would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

R994-405-311. New Work.

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral or implied.

~~The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. If the proposed duties, terms, or conditions of the work offered by an employer are not part of an existing contract, the offer is for a new contract of employment and constitutes an offer of new work. The provisions of the Suitable Work Test, Section R994-405-309, apply to offers of new work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages or benefits, does not constitute an offer of new work, even if those duties are not specified as part of the official job requirements. It may also be customary for workers to perform short term tasks involving different or new duties and when those assignments do not replace the regular duties of the worker, the contract of employment has not been changed.~~

~~(2) New Work is defined as:~~

~~(a) work offered by an employer for whom the individual has never worked;~~

~~(b) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job;~~

~~(c) work offered by an individual's present employer involving duties, terms or conditions different from those agreed upon as part of the existing contract of employment.~~

~~R994-405-312. Burden of Proof.~~

~~(1) Before benefits may be denied, the Department must show: the job was available, the claimant had an opportunity to learn about the conditions of employment, the claimant had an opportunity to apply for or accept the job, and the claimant's action or inaction resulted in the failure to obtain the job. The statute requires that the wage, hours and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied.~~

~~(2) When the Department has established the above elements, a disqualification must be assessed unless the claimant can establish that the work was not suitable, that there was good cause for failing to obtain the job, or that a disqualification would be against equity and good conscience.~~

~~R994-405-313. Period of Ineligibility.~~

~~(1) The disqualification period imposed under Subsection 35A-4-405(3) shall include the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification shall continue until the claimant has performed services in bona fide covered employment and earned wages equal to at least six times his or her weekly benefit amount.~~

~~(2) A disqualification may be assessed if the claimant refused an offer of suitable work prior to the effective date of the claim if the refusal was directly related to the claimant's unemployment. For example: If the claimant's job is eliminated or changed so substantially as to constitute new work, the separation is a layoff. However, if the new work offered by the regular employer is suitable, a disqualification may be assessed in accordance with Subsection 35A-4-405(3) of the Act.~~

~~(3) Disqualifications assessed in a prior benefit year shall continue into the new benefit year until purged by sufficient wages earned in subsequent bona fide covered employment.~~

~~R994-405-314. Notification.~~

~~In addition to notification to the claimant's most recent employer consistent with Subsection 35A-4-401(6), all employers directly involved in a claimant's failure to properly apply for or accept employment shall be notified of the determination made under Subsection 35A-4-405(3) including applicable appeal rights.~~]

R994-405-301. Failure to Apply for or Accept Suitable Work.

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available, the claimant has an obligation to properly apply for and accept offered work.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

(a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

(b) Knowledge.

It must be shown that the claimant knew, or should have known, about the job including the wage, type of work, hours, general location, and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

(c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

(i) accept a referral, or

(ii) properly apply for work, or

(iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

(a) the job is not suitable;

(b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or

(c) a denial of benefits would be contrary to equity and good conscience.

R994-405-302. Failure to Accept a Referral.

(1) Definition of a Referral. A referral is when the department provides information about a job opening to the claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

R994-405-303. Proper Application for Work.

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

(1) meet with the employer at the designated time and place,
(2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought, and
(3) present no unreasonable conditions or restrictions on acceptance of the available work.

R994-405-304. Failure to Accept an Offer of Work.

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work expected to begin within three weeks.

R994-405-305. Suitability of Work.

(1) A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work.
(2) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.
(3) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

R994-405-306. Elements to Consider in Determining Suitability.

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:
(1) Prior Earnings.
Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.
The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.
(a) During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.
(b) After a claimant has received one-third of the MBA for his or her regular claim, any work paying a wage that is equal to or greater than the lowest wage earned during the base period is suitable, as long as that wage is consistent with the prevailing wage standard.
(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.
(2) Prior Experience.
If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.
(a) After the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.
(b) After the claimant has received two-thirds of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past experience, training and skills is considered suitable.
(3) Working Conditions.
Working conditions refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work. If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. Working conditions include the following:
(a) Hours of Work.
Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.
(b) Benefits in Addition to Wages.
Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.
(c) Labor Disputes or Law Violations.
Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.
(4) Prior Training.
The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department

approval, or the training was subsidized by another government program.

(5) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

(7) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(8) Religious or Moral Convictions.

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

(9) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

R994-405-307. New Work.

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral, or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages, or benefits, does not constitute an offer of a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

(3) New work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job.

R994-405-308. Burden of Proof.

(1) The statute requires that the wage, hours, and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be against equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

R994-405-309. Period of Ineligibility.

(1) The disqualification period imposed under Subsection 35A-4-405(3) shall include the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification shall continue until the claimant has performed services in bona fide covered employment and earned wages equal to at least six times his or her WBA.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

(3) Disqualifications assessed in a prior benefit year shall continue into the new benefit year and until the claimant has earned

six times his or her WBA in subsequent bona fide covered employment.

R994-405-310. Good Cause.

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

R994-405-311. Equity and Good Conscience.

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there were mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the refusal of work was logical, sensible, or practical.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during, and after the week the job in question was available.

KEY: unemployment compensation, employment, employee's rights, employee termination
[~~July 19,~~]2004
Notice of Continuation June 27, 2002
35A-4-502(1)(b)
35A-1-104(4)
35A-4-405

▼ ▼

Workforce Services, Workforce Information and Payment Services

R994-406-505

Overpayments Not Set Up (NSU)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27473
FILED: 10/01/2004, 19:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department no longer uses this section of the rule so it is proposed to remove it.

SUMMARY OF THE RULE OR CHANGE: Before the advent of computers, the Department did not set up small claimant overpayments if the overpayment was $10 or less due to the administrative expense. It is now easier, and less expensive, to set up all overpayments. (DAR NOTE: The other rules filed for this issue are: the proposed repeal and reenactment of Rule R994-401 under DAR No. 27469; the proposed amendment to Section R994-201-101 under DAR No. 27470; the proposed repeal and reenactment of Rule R994-403 under DAR No. 27471; and the proposed amendment of Rule R994-405 under DAR No. 27472.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-4-406(2), 35A-4-406(3), 35A-4-406(4), and 35A-4-406(5)

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 amendment 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 11/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/16/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-406. Fraud and Fault.
[~~**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
[~~April 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)

▼ ▼

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Crime Victim Reparations, Administration
R270-3
ADA Complaint Procedure

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27460
FILED: 09/30/2004, 13:55

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Pursuant to 28 CFR 35.107, 1992 edition, the Americans with Disabilities Act (ADA), Crime Victim Reparations adopts this grievance procedures rule to provide for prompt and equitable resolution of complaints alleging any action prohibited by Title II of the ADA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have not been any written comments for or against this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to provide for prompt and equitable resolution of complaints pursuant to the ADA.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CRIME VICTIM REPARATIONS
ADMINISTRATION
Room 200
350 E 500 S
SALT LAKE CITY UT 84111-3347, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Connie Wettlaufer at the above address, by phone at 801-238-2371, by FAX at 801-533-4127, or by Internet E-mail at cwettlaufer@utah.gov

AUTHORIZED BY: Dan Davis, Director

EFFECTIVE: 09/30/2004

Crime Victim Reparations, Administration
R270-4
Government Records Access and Management Act

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27461
FILED: 09/30/2004, 13:55

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Authority for the Office of Crime Victim Reparations rule is found in the Government Records Access and Management Act (GRAMA), Section 63-2-101, et seq.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have not been any written comments for or against this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to provide clarification for agency specific implementation of GRAMA.

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

CRIME VICTIM REPARATIONS
ADMINISTRATION
Room 200
350 E 500 S
SALT LAKE CITY UT 84111-3347, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Connie Wettlaufer at the above address, by phone at 801-238-2371, by FAX at 801-533-4127, or by Internet E-mail at cwettlaufer@utah.gov

AUTHORIZED BY: Dan Davis, Director

EFFECTIVE: 09/30/2004

Health, Community and Family Health Services, Children with Special Health Care Needs

R398-1

Newborn Screening

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27443
FILED: 09/22/2004, 08:53

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 26-10-6, Testing of Newborn Infants, requires that each newborn in Utah shall be tested for phenylketonuria and other metabolic diseases which may result in mental retardation or brain damage. This statute authorizes the Department to charge fees to cover the costs of testing newborns and following up with parents of the tested newborns. This testing is a cost-effective critical method for preventing serious disability in the newborns of Utah. Therefore, the Department is authorized to adopt rules on the testing of newborns as required by Section 26-10-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to assure the proper testing and follow up of every newborn in Utah. It establishes the definitions, required tests, testing procedures, responsibilities, timing, and follow up procedures; and therefore, the rule should be continued.

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

HEALTH
COMMUNITY AND FAMILY HEALTH SERVICES,
CHILDREN WITH SPECIAL HEALTH CARE NEEDS
44 N MEDICAL DR
SALT LAKE CITY UT 84113, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Fay Keune at the above address, by phone at 801-584-8256, by FAX at 801-536-0966, or by Internet E-mail at fkeune@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 09/22/2004

Health, Community and Family Health Services, Children with Special Health Care Needs

R398-5

Birth Defects Reporting

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27444
FILED: 09/22/2004, 09:04

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule established reporting requirements for birth defects in Utah and for birth defect-related test results under the statutory authority of the Utah Department of Health to collect information that impacts the public health (Subsections 26-1-30(2)(c), (d), (e), (g), (p), (t); and Sections 26-10-2 and 26-25-1.)

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 filed since the inception of this rule in 1999.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Birth Defects Reporting Rule (Rule R398-5) is needed and should be continued to continue the identification and reporting of any pregnancy or infant where a birth defect has been diagnosed. The monitoring of birth defects provides the state with the following: 1) it establishes baseline prevalence rates of specific birth defects; 2) it monitors prevalence rates over time to assess whether an increase or decrease (after implementation of a prevention measure) occurs: 3) when an increase in prevalence occurs, it facilitates the determination

of the cause; 4) when a prevention activity is feasible or available, it facilitates the implementation and monitoring of prevalence to establish a decline; and 5) when an environmental agent or exposure occurs, the Utah Birth Defects Network has the capacity to monitor birth defects that might be associated with the exposure, assist with a public health intervention and assess whether this intervention has impacted prevalence.

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

HEALTH
COMMUNITY AND FAMILY HEALTH SERVICES,
CHILDREN WITH SPECIAL HEALTH CARE NEEDS
44 N MEDICAL DR
SALT LAKE CITY UT 84113, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marcia Feldkamp at the above address, by phone at 801-584-8443, by FAX at 801-584-8488, or by Internet E-mail at mfeldkamp@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 09/22/2004

Health, Health Systems Improvement, Emergency Medical Services
R426-11
General Provisions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27466
FILED: 10/01/2004, 10:08

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under the Emergency Medical Systems (EMS) Act, Section 26-8a-102, authorizes the Department of Health and the EMS Committee to establish uniform definitions for all Title R426 rules, and also provides administration standards applicable to all R426 rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the enactment of the rule in 1999, no opposing 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: Under Title 26, Chapter 8a, the rule establishes uniform definitions for all Title R426 rules, and provides administration standards applicable to all Title R426 rules. This rule must be continued to protect the health and safety of the citizens of Utah who receive prehospital care.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Buttrey at the above address, by phone at 801-538-6718, by FAX at 801-538-6808, or by Internet E-mail at jbuttrey@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 10/01/2004

Health, Health Systems Improvement, Emergency Medical Services
R426-12
Emergency Medical Services Training and Certification Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27439
FILED: 09/20/2004, 09:33

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Emergency Medical Services (EMS) Systems Act, Section 26-8a-302, authorizes the EMS Committee to establish initial and on-going certification training requirements for emergency medical services personnel and requires the Department to develop, conduct and authorize training and testing for emergency medical services personnel.

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 establishes the minimum certification and recertification requirements for EMS personnel and must be continued to protect the health and

safety of the citizens of Utah who receive prehospital care. No opposing comments have been received.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Leslie Johnson at the above address, by phone at 801-538-6292, by FAX at 801-538-6808, or by Internet E-mail at lesliejjohnson@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 09/20/2004

Health, Health Systems Improvement, Emergency Medical Services

R426-13

Emergency Medical Services Provider Designations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27463
FILED: 10/01/2004, 09:43

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under the Emergency Medical Systems (EMS) Act, Sections 26-8a-104 and 26-8a-105 authorize the Department of Health and the EMS Committee to establish standards for the emergency medical services provider designations.

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 enactment of the rule in 1999, one amendment was made in 2004. This amendment included public comments from affected parties to ensure the standards for the designation of emergency medical service providers. Since the enactment of the rule in 1999, no opposing comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to clearly list at what levels agencies can be designated; minimum requirements for designation; the application process including denial criteria; and change of service level requirements. Under Title 26, Chapter 8a, the rule establishes standards for the designation of emergency medical service providers and must be continued to protect the health and safety of the citizens of Utah who receive prehospital care.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 10/01/2004

Health, Health Systems Improvement, Emergency Medical Services

R426-14

Ambulance Service and Paramedic Service Licensure

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27465
FILED: 10/01/2004, 10:02

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: The Emergency Medical Systems (EMS) Act, Section 26-8a-105, authorizes the Department to establish standards for the licensure of ambulance and paramedic services.

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 enactment of the rule in 1999, one amendment was made in 2004. This amendment included public comments from affected parties to ensure license standards were consistent and added the selection of a provider through a public bid process which had been adopted in the in the EMS Act, Section 26-8a-405 effective January 2004. Since the enactment of the rule in 1999, the Department received written comments regarding Rule R426-14 from Gold Cross Services commenting on definitions in Sections R426-14-200 and R426-14-201,

language in Subsection R426-14-202(2), and requested clarification on Subsection R426-14-300(j). The Department responded to Gold Cross Ambulance addressing their comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes standards for the minimum licensure of ambulance and paramedic services and must be continued to protect the health and safety of the citizens of Utah who receive prehospital care.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Buttrey at the above address, by phone at 801-538-6718, by FAX at 801-538-6808, or by Internet E-mail at jbuttrey@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 10/01/2004

Health, Health Systems Improvement, Emergency Medical Services

R426-15

Licensed and Designated Provider Operations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27467
FILED: 10/01/2004, 10:12

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under the Emergency Medical Systems (EMS) Act, Sections 26-8a-104 and 26-8a-105 authorize the Department of Health and the EMS Committee to establish standards for the operations of emergency medical service providers licensed or designated.

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 enactment of the rule in 1999, one amendment was made in 2004. This amendment included public comments from affected parties to ensure the standards for the operations of the licensed or designated emergency medical services providers. The Department received one comment from Gold Cross Services, Inc. commenting on Rule R426-15 that referred to existing language in the rule, but was not part of a proposed rule change, and on Subsections R426-15-1(d) and (e) that referred to grammatical issues, which did not change the current practice. The Department responded to Gold Cross Ambulance Services addressing their comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes standards for the operations of the licensed and designated providers and must be continued to protect the health and safety of the citizens of Utah who receive prehospital care. This rule is needed to make the operations rules consistent with each level of licensure or designation. It is also needed to bring the State into compliance with the Federal Safe Harbor legislation dealing with restocking ambulances and to put into rule the current variance policy of the Bureau.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Buttrey at the above address, by phone at 801-538-6718, by FAX at 801-538-6808, or by Internet E-mail at jbuttrey@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 10/01/2004

Health, Health Systems Improvement, Emergency Medical Services

R426-16

Emergency Medical Services Maximum Ambulance Transportation Rates and Charges

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27464
FILED: 10/01/2004, 09:52

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Emergency Medical Systems (EMS) Act, Section 26-8a-403, authorizes the EMS Committee to establish maximum rates for ground ambulance providers and paramedic 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 enactment of the rule in 1999, one amendment was made in 2004. This amendment included public comments from affected parties to the establishment of maximum transportation rates for ground ambulance providers and paramedic providers Since the enactment of the rule, the Department received written comments regarding the July 1, 2002, increase of maximum rates in Sections R426-16-2 and R426-16-3 from Utah EMS Association. The Department responded to Utah EMS Association addressing their issues, and is currently in the process of a proposed rule change amending Rule R426-16. There are no opposing comments since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides for the establishment of maximum ground ambulance transportation rates to be charged by licensed ambulance and paramedic providers and must be continued to protect the welfare, health and safety of the citizens of Utah who receive prehospital care.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Buttrey at the above address, by phone at 801-538-6718, by FAX at 801-538-6808, or by Internet E-mail at jbuttrey@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 10/01/2004

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Health, Health Systems Improvement, Emergency Medical Services

R426-100

Emergency Medical Services Do Not Resuscitate

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27468
FILED: 10/01/2004, 10:18

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under the Emergency Medical Systems (EMS) Act, Title 26, Chapter 8a, authorizes the Department of Health and the EMS Committee to implement the prehospital Emergency Medical Services/Do Not Resuscitate (EMS/DNR) provisions of Section 75-2-1105.5 and clarifies that EMS personnel shall also follow a patient's treating physician's orders, which may include an order not to resuscitate a patient that does not comply with the formalities of the EMS/DNR form.

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 enactment of the rule in 1999, no opposing 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: Under Title 26, Chapter 8a, the rule implements the prehospital Emergency Medical Services/Do Not Resuscitate (EMS/DNR) provisions of Section 75-2-1105.5 and clarifies that EMS personnel shall also follow a patient's treating physician's orders, which may include an order not to resuscitate a patient that does not comply with the formalities of the EMS/DNR form. This rule must be continued to protect the health and safety of the citizens of Utah who receive prehospital care.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Buttrey at the above address, by phone at 801-538-6718, by FAX at 801-538-6808, or by Internet E-mail at jbuttrey@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 10/01/2004

Insurance, Administration
R590-67
Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27452
FILED: 09/28/2004, 12:02

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule gets its authority from Subsection 31A-2-201(3), which authorizes the commissioner to make rules to implement the provisions of Title 31A of the Utah Code, and in this case the implementation of Chapter 5, Domestic Stock and Mutual Insurance Corporations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department received no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Many insurance companies in Utah are stock insurance companies. Stockholders in an insurance company have various rights, which may be assigned to another person via a proxy statement. This rule provides guidance as to the form and content of proxy solicitations made to insurance stockholders. Without this rule, there may be instances where individuals unfairly or covertly obtain a proxy to act on behalf of a stockholder without the stockholder's full or complete knowledge of what is happening; and therefore, this rule should be continued.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/28/2004

Insurance, Administration
R590-76
Health Maintenance Organizations and Limited Health Plans

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27445
FILED: 09/23/2004, 12:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to implement Title 31a, Chapter 8, entitled the same as the rule. There are many places in Title 31A, Chapter 8, where authority is given to the commissioner to write rules to implement the code. The areas of the code that provide specific authority to write this rule are: Subsection 31A-8-104(1)(b) authorizing the commissioner and the director of the Health Department to write rules regarding a quality assurance plan. Section R590-76-9 provides requirements for a quality assurance plan provided by HMOs and the information they are to give to the directors of the Health Department. Subsection 31A-8-402.7(4) gives the commissioner the authority to define the scope of the HMO's service area. This is done in Section R590-76-7. Subsection 31A-2-201(3) gives the commissioner general rulemaking authority to make rules to implement the provisions of Title 31A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Within the past five years the department made changes to this rule several times beginning 08/01/02 to 04/01/03. The process began as a result of legislation passed by the federal and state government. During that period we had two hearings and five comment periods and received 11 written comments from the insurance industry. No one suggested the rule be repealed but they did suggest revisions to proposed language. The following is a summary of suggestions received: 1) in Subsection R590-76-4(1), allow providers to balance bill and reference Section R590-165-3; 2) in Subsection R590-76-4(7), eliminate "extension of benefits;" 3) in Subsection R590-76-5(1)(a), replace "evidence of coverage" with "outline of coverage," to be consistent with Rule R590-126; 4) in

Subsection R590-76-5(1)(c), eliminate time frames; 5) in Subsection R590-76-5(6), add out-of-area service language; 6) in Subsection R590-76-5(7), include the term "coinsurance;" 8) in Subsection R590-76-5(10), change the reference Section R590-76-9 to Subsection R590-76-8(4); 9) in Subsection R590-76-5(11), replace "the contract..." with "the group contract...," and remove "continuation of coverage"; 10) in Section R590-76-6, some were for and some against including language regarding deductibles, out-of-pocket maximums, and lifetime maximum benefit limits; 11) in Subsection R590-76-7(1)(b), delete "continuity of care"; 12) in Subsection R590-76-7(1)(c)(ii), delete mandate of "emergency telephone consultation on a 24 hours per day, 7 days per week basis"; 13) in Subsection R590-76-7(2)(d)(iii), specify that special diets applies only to phenylketonuria (PKU) or inborn errors of amino acid or urea cycle metabolism; 14) in Subsection R590-76-7(2)(d)(vii), delete "a broad range of...;" 15) in Subsection R590-76-7(3)(a), add "coinsurance" and "deductible," and specify that this section does not apply to out of area emergency care service;" 16) in Subsection R590-76-7(3)(b), eliminate reference to "transportation" services since there is no statutory authority; 17) in Subsection R590-76-8(1)(a), require notification when a provider is terminated by an HMO for cause, and notify of changes in providers via the internet rather than any other method; 19) in Subsection R590-76-8(2), eliminate notification requirement to subscribers who are not affected by a change in the service area; 20) define "enrollee"; 21) in Subsection R590-76-8(3), clarify authority of HMOs and PPOs to balance bill; 22) in Subsection R590-76-9(1)(b), one insurer warned their HMO would be put out of business because of the certification costs, and asked that acronyms be spelled out; and 23) in Subsection R590-76-9(2), exempt certified HMOs from audits of their quality control system.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides protection to a great number of Utah citizens. The rule gives HMOs guidance regarding coverage and evidence of coverage requirements. It also gives guidance on what services must be in the policy, the quality controls an insurer must provide and notification requirement they must follow when the provider list changes. All of these requirements and guidelines help the department ensure that consumers receive the notifications and coverages required under the law, therefore, this rule should be continued.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/23/2004

▼ ▼

Insurance, Administration
R590-79
Life Insurance Disclosure Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27447
FILED: 09/27/2004, 09:07

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule gets its general rulemaking authority from Subsection 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A of the Utah Code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments within the past five years regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule requires disclosure of basic life policy features specified in Part 4 of Chapter 22 of the Insurance Code and specifies the format for disclosure. The disclosure informs and assists consumers in understanding the policy they purchase; and therefore, this rule should be continued.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/27/2004

▼ ▼

Insurance, Administration
R590-83
Unfair Discrimination on the Basis of Sex or Marital Status

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27450
FILED: 09/28/2004, 10:50

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule gets its authority from Subsection 31A-2-201(1) and 31A-2-201(3), which authorizes the commissioner to make rules to implement the provisions of Title 31A of the Utah Code. The specific rulemaking authority comes from Marketing Practices in Subsection 31A-23-302(8) but which is now Subsection 31A-23a-402(8). The numbering of this part of the code was a result of H.B. 374. This legislation did not change the language in Subsection 31A-23a-402(8) only the Part of the code it is located in. Subsection 31A-23a-402(8) gives the commissioner the authority to define unfair business practices by rule after a finding that it is misleading, deceptive, unfairly discriminatory, etc. This rule prohibits discrimination in all new and renewal insurance contracts based solely on sex or marital status. (DAR NOTE: H.B. 374 is found at UT L 2003 Ch 298, and was effective 05/05/2003.)

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received by the department regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued in force because it provides important protection for consumers allowing the department to regulate against unfair and discriminatory transactions between insurers and consumers. Allowing this rule to expire could give the impression that the department is not concerned about unfair discrimination based on gender or marital status.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/28/2004

Insurance, Administration
R590-127
Rate Filing Exemptions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27446
FILED: 09/24/2004, 16:23

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The general rulemaking authority for this rule comes from Subsection 31A-2-201(3), which authorizes the commissioner to make rules to implement the provisions of Title 31A of the Utah Code. Specific rulemaking authority comes from Section 31A-19a-103 authorizing the commissioner to write rules to exempt a person, persons, or market segment from any part of Chapter 19a. This rule exempts from the rate filing requirements in Section 31A-19a-203, (a) rates, (a) rating, special risk rating, commercial excess, and umbrella liability insurance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There are four key reasons for continuing this rule in force: 1) it clarifies Title 31A, Chapter 19a; 2) it exempts certain lines of insurance from filing rates; 3) it puts a limitation on scheduled rating plans; and 4) it provides definitions for (a) rates, excess insurance, individual risk filing, self-insured retention, and umbrella liability insurance.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/24/2004

Insurance, Administration
R590-129
Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27449
FILED: 09/28/2004, 09:54

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule gets its authority from Subsection 31A-2-201(1) and 31A-2-201(3), which authorizes the commissioner to make rules to implement the provisions of Title 31A of the Utah Code. The specific rulemaking authority comes from the Marketing Practices part of the code, which was Subsection 31A-23-302(8) but is now Subsection 31A-23a-402(8). The revised numbering of this part of the code was a result of H.B. 374, which was passed in 2003. This legislation did not change the language in Subsection 31A-23a-402(8) only the Part of the chapter it was located in. Subsection 31A-23a-402(8) gives the commissioner the authority to define unfair business practices by rule after a finding that it is misleading, deceptive, unfairly discriminatory, etc. This rule prohibits discrimination in all new and renewal insurance contracts based solely on the basis of sex or marital status. (DAR NOTE: H.B. 374 is found at UT L 2003 Ch 298, and was effective 05/05/2003.)

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments on this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued in force because it provides important protection for consumers and insurers and allows the department to regulate against unfair and discriminatory transactions between insurers and consumers. Allowing this rule to expire could give the impression that the department does not care about unfair discrimination based on physical and mental impairments.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/28/2004

Insurance, Administration
R590-167
Individual and Small Employer Health Insurance Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27451
FILED: 09/28/2004, 11:11

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule receives its general and specific rulemaking authority from the following code references: Section 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A of the Utah Code; and Subsection 31A-30-106(1)(k).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In May of 2004, the department began the formal rulemaking process to make changes to this rule. As of the date of this Five-Year Review filing, that process had not been completed. So far the department has only received one written comment in the past five years. The comment was related to the grammar in Subsection R590-167-11(3)(a). The department has since proposed the elimination of that subsection and the report requirement in it.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R590-167 was written under the authority of Subsection 31A-30-106(1)(i). The rule,

along with Title 31A, Chapter 30, regulates and prevents abuse in insurer rating practices, assures consumers receive credit for previous coverage, and limits the use of restrictive riders; and therefore, this rule should be continued.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/28/2004

Labor Commission, Industrial Accidents

R612-8

Procedural Guidelines for the Reemployment Act

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27459
FILED: 09/30/2004, 10:31

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-8-111 gives the Labor Commission authority to establish rules to administer the Reemployment Act.

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 since the last five-year review of the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the Commission's continuing responsibility to administer Utah's workers' compensation system and the reemployment of injured workers, it remains necessary for the Commission to set forth guidelines for reemployment of injured workers, and therefore this rule should be continued.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
Joyce Sewell at the above address, by phone at 801-530-6988, by FAX at 801-530-6804, or by Internet E-mail at jsewell@utah.gov

AUTHORIZED BY: R Lee Ellertson, Commissioner

EFFECTIVE: 09/30/2004

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 27315 (REP): R414-26. Implementation and Maintenance of the Health Care Financing Administration Common Procedure Coding System (HCPCS).
Published: August 15, 2004
Effective: September 16, 2004

No. 27316 (NEW): R414-90. Diabetes Self-Management Training.
Published: August 15, 2004
Effective: September 16, 2004

No. 27314 (NEW): R414-140. Choice of Health Care Delivery Program.
Published: August 15, 2004
Effective: September 16, 2004

Human Services

Child and Family Services

No. 27321 (NEW): R512-306. Independent Living Services, Education and Training Voucher Program.
Published: August 15, 2004
Effective: September 22, 2004

Natural Resources

Parks and Recreation

No. 27304 (AMD): R651-406. Off-Highway Vehicle Registration Fees.
Published: August 1, 2004
Effective: October 1, 2004

Workforce Services

Workforce Information and Payment Services

No. 27318 (AMD): R994-310. Coverage.
Published: August 15, 2004
Effective: September 24, 2004

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2004, including notices of effective date received through October 1, 2004, the effective dates of which are no later than October 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. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
Facilities Construction and Management					
R23-3	Planning and Programming for Capital Projects	27313	5YR	07/28/2004	2004-16/33
R23-29	Across the Board Delegation	26991	5YR	03/10/2004	2004-7/35
Finance					
R25-7	Travel-Related Reimbursements for State Employees	27120	AMD	07/01/2004	2004-10/4
R25-7-6	Reimbursements for Meals	27164	AMD	07/02/2004	2004-11/4
Fleet Operations, Surplus Property					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
Records Committee					
R35-1	State Records Committee Appeal Hearing Procedures (5YR EXTENSION)	26973	NSC	07/02/2004	Not Printed
R35-1	State Records Committee Appeal Hearing Procedures	27277	5YR	07/02/2004	2004-15/62

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R35-2	Declining Appeal Hearings	27278	5YR	07/02/2004	2004-15/62
R35-3	Prehearing Conferences	27279	5YR	07/02/2004	2004-15/63
R35-4	Compliance with State Records Committee Decisions and Orders	27280	5YR	07/02/2004	2004-15/63
R35-5	Subpoenas Issued by the Records Committee	27281	5YR	07/02/2004	2004-15/64
R35-6	Expedited Hearings	27282	5YR	07/02/2004	2004-15/64
Agriculture and Food					
Animal Industry					
R58-20	Domesticated Elk Hunting Parks	26990	5YR	03/05/2004	2004-7/35
R58-20-5	Facilities	26989	AMD	05/04/2004	2004-7/3
R58-21	Trichomoniasis	26891	AMD	03/04/2004	2004-3/4
Plant Industry					
R68-6	Utah Nursery Act	27320	AMD	09/15/2004	2004-16/5
R68-7-6	Categorization of Pesticide Applicators	26794	NSC	01/01/2004	Not Printed
R68-20-1	Authority	26949	AMD	04/01/2004	2004-5/2
R68-20-1	Authority	26987	NSC	05/01/2004	Not Printed
Regulatory Services					
R70-310	Grade A Pasteurized Milk	27149	AMD	07/02/2004	2004-11/6
R70-310	Grade A Pasteurized Milk	27286	5YR	07/09/2004	2004-15/65
R70-330	Raw Milk for Retail	27069	AMD	06/02/2004	2004-9/4
R70-630	Water Vending Machine	27291	5YR	07/13/2004	2004-15/65
R70-630	Water Vending Machine	27290	AMD	09/08/2004	2004-15/4
Alcoholic Beverage Control					
Administration					
R81-1-3	General Policies	27025	AMD	06/01/2004	2004-8/4
R81-1-8	Consent Calendar Procedures	27027	AMD	06/01/2004	2004-8/5
R81-1-21	Beer Advertising in Event Venues	27028	AMD	06/01/2004	2004-8/6
R81-1-21	Beer Advertising in Event Venues	27105	NSC	06/01/2004	Not Printed
R81-1-21	Beer Advertising in Event Venues	27145	NSC	06/01/2004	Not Printed
R81-1-22	Diplomatic Embassy Shipments and Purchases	27029	AMD	06/01/2004	2004-8/8
R81-1-23	Sales Restrictions on Products of Limited Availability	27030	AMD	06/01/2004	2004-8/10
R81-2-1	Special Orders of Liquor by Public	27031	AMD	06/01/2004	2004-8/11
R81-2-2	Liquor Returns, Refunds and Exchanges	27032	AMD	06/01/2004	2004-8/12
R81-2-7	Minors on Premises	27033	AMD	06/01/2004	2004-8/14
R81-2-8	Accepting Checks as Payment for Liquor	27034	AMD	06/01/2004	2004-8/14
R81-2-9	Accepting Credit Cards as Payment for Liquor	27035	AMD	06/01/2004	2004-8/16
R81-2-9	Accepting Credit Cards as Payment for Liquor	27201	AMD	08/02/2004	2004-12/3
R81-2-10	State Store Hours	27036	AMD	06/01/2004	2004-8/17
R81-2-11	Industry Members in State Stores	27037	AMD	06/01/2004	2004-8/18
R81-3-5	Special Orders of Liquor by Public	27038	AMD	06/01/2004	2004-8/19
R81-3-6	Liquor Returns, Refunds and Exchanges	27039	AMD	06/01/2004	2004-8/20
R81-3-14	Type 5 Package Agencies	27040	AMD	06/01/2004	2004-8/22
R81-3-16	Minors on Premises	27041	AMD	06/01/2004	2004-8/23
R81-3-17	Consignment Inventory Package Agencies	27042	AMD	06/01/2004	2004-8/24

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R81-3-18	Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales	27043	AMD	06/01/2004	2004-8/25
R81-3-19	Credit Cards	27044	AMD	06/01/2004	2004-8/26
R81-3-19	Credit Cards	27146	NSC	06/01/2004	Not Printed
R81-3-19	Credit Cards	27104	NSC	06/01/2004	Not Printed
R81-4D-13	On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales	27045	AMD	06/01/2004	2004-8/27
R81-6-6	Religious Wine Permits	27046	AMD	06/01/2004	2004-8/29
R81-8-2	Out of State Business	27047	AMD	06/01/2004	2004-8/30
R81-8-3	Winery Tasting Facilities	27048	AMD	06/01/2004	2004-8/31
Commerce					
Administration					
R151-33	Pete Suazo Utah Athletic Commission Act Rule	27312	AMD	09/15/2004	2004-16/8
Consumer Protection					
R152-11	Utah Consumer Sales Practices Act Rules	26945	AMD	05/20/2004	2004-5/3
R152-21	Credit Services Organizations Act Rules	27238	5YR	06/15/2004	2004-13/66
R152-34	Postsecondary Proprietary School Act Rules	26905	AMD	05/20/2004	2004-4/2
Occupational and Professional Licensing					
R156-1	General Rules of the Division of Occupational and Professional Licensing	26678	NSC	01/01/2004	Not Printed
R156-1	General Rules of the Division of Occupational and Professional Licensing	27358	EMR	08/24/2004	2004-18/79
R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-1-302	Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition	27103	NSC	06/01/2004	Not Printed
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/74
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	02/19/2004	2004-2/10
R156-22-503	Administrative Penalties	26859	NSC	01/01/2004	Not Printed
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	27019	AMD	05/24/2004	2004-8/32
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	AMD	07/26/2004	2004-8/39
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	CPR	07/26/2004	2004-12/73
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-42a	Occupational Therapy Practice Act Rules	27400	5YR	09/02/2004	2004-19/48
R156-44a	Nurse Midwife Practice Act Rules	27224	5YR	06/10/2004	2004-13/66
R156-46a	Hearing Instrument Specialist Licensing Act Rules	27247	5YR	06/24/2004	2004-14/56
R156-47b	Massage Therapy Practice Act Rules	26937	AMD	06/07/2004	2004-5/5
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-55b	Electricians Licensing Rules	27112	AMD	06/15/2004	2004-10/6
R156-55d-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	27188	AMD	10/05/2004	2004-12/4
R156-55d-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	27188	CPR	10/05/2004	2004-17/47
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56	Utah Uniform Building Standard Act Rules	26866	NSC	01/01/2004	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	27101	CPR	08/17/2004	2004-14/37
R156-56	Utah Uniform Building Standard Act Rules	27101	AMD	08/17/2004	2004-9/5
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
R156-60a	Social Worker Licensing Act Rules	27285	AMD	09/01/2004	2004-15/17
R156-61	Psychologist Licensing Act Rules	27225	5YR	06/10/2004	2004-13/67
R156-63	Security Personnel Licensing Act Rules	26888	AMD	03/04/2004	2004-3/5
R156-68	Utah Osteopathic Medical Practice Act Rules	26956	AMD	04/15/2004	2004-6/2
R156-71-202	Naturopathic Physician Formulary	26998	AMD	05/04/2004	2004-7/3
R156-71-202	Naturopathic Physician Formulary	27140	NSC	06/01/2004	Not Printed
R156-74	Certified Shorthand Reporters Licensing Act Rules	26927	5YR	02/02/2004	2004-4/75
R156-76-102	Definitions	26777	AMD	01/20/2004	2003-23/14
Real Estate					
R162-3	License Status Change	27026	AMD	05/20/2004	2004-8/44
R162-6-2	Standards of Practice	26944	AMD	04/21/2004	2004-5/6
R162-6-2	Standards of Practice	27009	NSC	04/21/2004	Not Printed
R162-7-3	Investigation and Enforcement	26835	AMD	02/18/2004	2004-1/9
R162-101-2	Definitions	27132	AMD	09/10/2004	2004-10/10
R162-103	Appraisal Education Requirements	27241	AMD	10/07/2004	2004-14/2
R162-105	Scope of Authority	26890	5YR	01/13/2004	2004-3/42
R162-105	Scope of Authority	27131	AMD	09/10/2004	2004-10/11
R162-106-8	Draft Reports	27098	AMD	07/28/2004	2004-9/11
R162-107	Unprofessional Conduct	27128	AMD	09/10/2004	2004-10/13
R162-201	Residential Mortgage Definitions	27129	NEW	06/29/2004	2004-10/15
R162-202	Residential Mortgage Renewal Period	26837	AMD	02/03/2004	2004-1/10
R162-202	Initial Application	27130	AMD	06/29/2004	2004-10/15
R162-203	Changes to Residential Mortgage Registration Statement	26909	AMD	04/12/2004	2004-4/7
R162-204	Residential Mortgage Record Keeping Requirements	26908	AMD	04/12/2004	2004-4/8
R162-205	Residential Mortgage Unprofessional Conduct	26907	AMD	04/12/2004	2004-4/9
R162-205	Residential Mortgage Unprofessional Conduct	27352	AMD	10/07/2004	2004-17/11
R162-206	Licensing Examination	26840	NEW	02/03/2004	2004-1/12
R162-207	License Renewal	26839	NEW	02/03/2004	2004-1/13
R162-208	Continuing Education	26836	NEW	02/03/2004	2004-1/14
R162-209	Administrative Proceedings	26906	AMD	04/12/2004	2004-4/10
Securities					
R164-11-2	Hearings for Certain Exchanges of Securities	26481	AMD	01/05/2004	2003-15/17
R164-11-2	Hearings for Certain Exchanges of Securities	26481	CPR	01/05/2004	2003-23/83

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Community and Economic Development					
Community Development, Library					
R223-2-2	Definitions	27125	AMD	09/08/2004	2004-10/17
Corrections					
Administration					
R251-101	Corrections Advisory Council Bylaws	26769	REP	03/24/2004	2003-23/15
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RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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	26895	R722-900	5YR	01/15/2004	2004-3/48
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Environmental Quality, Drinking Water	27252	R309-302	AMD	10/15/2004	2004-14/10
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	27271	R277-444	AMD	08/17/2004	2004-14/4
	26985	R277-700	NSC	04/01/2004	Not Printed
	26902	R277-700	AMD	03/03/2004	2004-3/10
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	27170	R477-12	AMD	07/02/2004	2004-11/57
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Tax Commission, Administration	27268	R861-1A-16	NSC	07/01/2004	Not Printed
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	27310	R686-103	AMD	09/02/2004	2004-15/58
	27141	R686-103	5YR	05/05/2004	2004-11/91
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	27236	R861-1A-38	AMD	09/14/2004	2004-13/47
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	26774	R512-3	NSC	03/04/2004	Not Printed
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	26971	R309-204	AMD	04/21/2004	2004-6/23
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	27118	R523-1-16	AMD	06/17/2004	2004-10/23
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	27407	R277-451	5YR	09/07/2004	2004-19/48
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	27210	R277-520	AMD	07/16/2004	2004-12/21
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	27463	R426-13	5YR	10/01/2004	2004-20/79
	27465	R426-14	5YR	10/01/2004	2004-20/80
	26670	R426-14	AMD	01/01/2004	2003-20/10
	26671	R426-15	AMD	01/01/2004	2003-20/14
	27467	R426-15	5YR	10/01/2004	2004-20/80
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	27468	R426-100	5YR	10/01/2004	2004-20/82
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	27172	R477-5	NSC	07/01/2004	Not Printed
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	26932	R986-100-134	AMD	04/01/2004	2004-4/33
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Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
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	27269	R865-13G-10	AMD	09/14/2004	2004-14/32
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Environmental Quality, Air Quality	26896	R307-110-12	CPR	05/18/2004	2004-8/87
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	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26940	R307-415	5YR	02/09/2004	2004-5/45
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Health, Health Care Financing, Coverage and Reimbursement Policy	27151	R414-9	NSC	06/01/2004	Not Printed
	26854	R414-9	NEW	02/03/2004	2004-1/26
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Human Resource Management, Administration	27161	R477-2	AMD	07/02/2004	2004-11/29
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	26997	R986-200-208	NSC	05/01/2004	Not Printed
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Lieutenant Governor, Elections	27127	R623-3	NEW	06/16/2004	2004-10/27
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	27117	R523-1-10	AMD	06/17/2004	2004-10/21
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	27257	R523-1-22	AMD	08/17/2004	2004-14/25
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	26776	R651-611	AMD	01/06/2004	2003-23/52
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	26760	R309-705	AMD	01/01/2004	2003-22/19
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Health, Health Care Financing, Coverage and Reimbursement Policy	27232	R414-304	AMD	08/26/2004	2004-13/14

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	26793	R710-4	AMD	01/02/2004	2003-23/67
	26920	R710-4	EMR	01/28/2004	2004-4/66
	27002	R710-9	AMD	05/05/2004	2004-7/23
	26788	R710-9	AMD	01/02/2004	2003-23/72
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Human Services, Youth Corrections	27267	R547-14	NSC	07/01/2004	Not Printed
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Natural Resources, Water Rights	26844	R655-11	NSC	01/01/2004	Not Printed
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Agriculture and Food, Regulatory Services	27286	R70-310	5YR	07/09/2004	2004-15/65
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	27069	R70-330	AMD	06/02/2004	2004-9/4
	27290	R70-630	AMD	09/08/2004	2004-15/4
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Human Services, Administration, Administrative Services, Licensing	27255	R501-8	NSC	07/01/2004	Not Printed
	27275	R501-12	AMD	09/09/2004	2004-15/46
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	26817	R657-5	AMD	01/21/2004	2003-24/46
	27283	R657-6	AMD	09/01/2004	2004-15/55
	26818	R657-17-4	AMD	01/21/2004	2003-24/55
	26867	R657-33	AMD	02/24/2004	2004-2/3
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	26974	R309-700	AMD	08/06/2004	2004-6/31
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Human Resource Management, Administration	27168	R477-9	AMD	07/02/2004	2004-11/53
hazardous air pollutant					
Environmental Quality, Air Quality	26939	R307-214	5YR	02/09/2004	2004-5/44
	26887	R307-214	NSC	02/09/2004	Not Printed
	27293	R307-214-2	AMD	10/07/2004	2004-15/28
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Environmental Quality, Environmental Response and Remediation	27194	R311-200	AMD	09/09/2004	2004-12/27
	27195	R311-201	AMD	09/09/2004	2004-12/30
	27196	R311-203	AMD	09/09/2004	2004-12/34
	27197	R311-204	AMD	09/09/2004	2004-12/37
	27198	R311-205	AMD	09/09/2004	2004-12/39
	27199	R311-206	AMD	09/09/2004	2004-12/44
	27200	R311-212	AMD	09/09/2004	2004-12/48
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Environmental Quality, Solid and Hazardous Waste	27289	R315-2-13	AMD	09/15/2004	2004-15/35

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	26799	R428-11	AMD	02/27/2004	2003-23/37
health care					
Health, Community and Family Health Services, Children with Special Health Care Needs	27443	R398-1	5YR	09/22/2004	2004-20/77
health care facilities					
Health, Health Systems Improvement, Licensing	27303	R432-2	AMD	09/14/2004	2004-15/44
	26825	R432-2-11	AMD	04/12/2004	2003-24/26
	27250	R432-32	NEW	09/01/2004	2004-14/17
health facilities					
Health, Health Systems Improvement, Licensing	26868	R432-1	5YR	01/05/2004	2004-3/44
	26876	R432-2	5YR	01/05/2004	2004-3/45
	26875	R432-3	5YR	01/05/2004	2004-3/45
	26869	R432-4	5YR	01/05/2004	2004-3/46
	26877	R432-5	5YR	01/05/2004	2004-3/46
	26886	R432-6	5YR	01/08/2004	2004-3/47
	26755	R432-100-16	AMD	01/09/2004	2003-22/24
	27186	R432-100-17	AMD	07/19/2004	2004-12/57
	26993	R432-150-6	AMD	05/26/2004	2004-7/13
	26992	R432-270-29b	AMD	05/26/2004	2004-7/15
health insurance					
Insurance, Administration	27150	R590-167	AMD	10/07/2004	2004-11/60
health insurance filings					
Insurance, Administration	26806	R590-220	NEW	03/24/2004	2003-24/33
	27013	R590-220	NSC	04/01/2004	Not Printed
	26806	R590-220	CPR	03/24/2004	2004-4/61
health planning					
Health, Center for Health Data, Health Care Statistics	26800	R428-10	AMD	02/27/2004	2003-23/36
	26799	R428-11	AMD	02/27/2004	2003-23/37
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Commerce, Occupational and Professional Licensing	27247	R156-46a	5YR	06/24/2004	2004-14/56
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Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
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Lieutenant Governor, Elections	27123	R623-2	NEW	06/16/2004	2004-10/24
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Transportation, Administration	26720	R907-67	NEW	01/05/2004	2003-22/50
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HMO insurance					
Insurance, Administration	27445	R590-76	5YR	09/23/2004	2004-20/83
holidays					
Human Resource Management, Administration	27166	R477-7	AMD	07/02/2004	2004-11/42
hospital					
Health, Health Care Financing, Coverage and Reimbursement Policy	27222	R414-1B	EMR	06/09/2004	2004-13/64
	27227	R414-1B	NEW	10/06/2004	2004-13/4
hospital policy					
Health, Center for Health Data, Health Care Statistics	26800	R428-10	AMD	02/27/2004	2003-23/36
	26799	R428-11	AMD	02/27/2004	2003-23/37
hospitals					
Health, Health Care Financing, Coverage and Reimbursement Policy	27227	R414-1B	CPR	10/06/2004	2004-17/48
hostile work environment					
Human Resource Management, Administration	27175	R477-15	NSC	07/01/2004	Not Printed
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Human Services, Administration, Administrative Services, Licensing	27008	R501-1	NSC	04/01/2004	Not Printed
	27135	R501-2	NSC	07/01/2004	Not Printed
	26925	R501-2	AMD	03/17/2004	2004-4/16
	27229	R501-7	AMD	08/05/2004	2004-13/28
	26904	R501-7	AMD	05/28/2004	2004-4/22
	27255	R501-8	NSC	07/01/2004	Not Printed
	27275	R501-12	AMD	09/09/2004	2004-15/46
	27256	R501-12	NSC	07/01/2004	Not Printed
	26874	R501-16	NSC	05/01/2004	Not Printed
	26804	R501-16	AMD	04/12/2004	2003-24/29
Human Services, Services for People with Disabilities	27233	R539-1	AMD	08/19/2004	2004-13/35
hunting					
Natural Resources, Wildlife Resources	26819	R657-38	AMD	01/21/2004	2003-24/56
hunting and fishing licenses					
Natural Resources, Wildlife Resources	26818	R657-17-4	AMD	01/21/2004	2003-24/55
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Public Safety, Driver License	27364	R708-31	5YR	08/25/2004	2004-18/86
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Transportation, Motor Carrier	26823	R909-1	AMD	03/01/2004	2003-24/66

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	26781	R414-304	AMD	01/01/2004	2003-23/29
	27232	R414-304	AMD	08/26/2004	2004-13/14
income tax					
Tax Commission, Auditing	27093	R865-9I-38	AMD	06/29/2004	2004-9/18
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Human Services, Recovery Services	27109	R527-302	5YR	04/21/2004	2004-10/38
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Human Services, Child and Family Services	27321	R512-306	NEW	09/22/2004	2004-16/24
	27243	R512-306	EMR	06/22/2004	2004-14/50
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Environmental Quality, Water Quality	26796	R317-1	AMD	03/29/2004	2003-23/16
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Public Service Commission, Administration	26780	R746-200-6	AMD	01/07/2004	2003-23/76
information technology resources					
Governor, Planning and Budget, Chief Information Officer	27119	R365-7	NEW	06/28/2004	2004-10/20
inmates					
Education, Administration	26870	R277-735	5YR	01/05/2004	2004-3/43
inspections					
Agriculture and Food, Animal Industry	26990	R58-20	5YR	03/05/2004	2004-7/35
	26989	R58-20-5	AMD	05/04/2004	2004-7/3
Agriculture and Food, Plant Industry	26794	R68-7-6	NSC	01/01/2004	Not Printed
	26987	R68-20-1	NSC	05/01/2004	Not Printed
	26949	R68-20-1	AMD	04/01/2004	2004-5/2
instructional materials					
Education, Administration	26999	R277-469	AMD	05/05/2004	2004-7/5
insurance					
Human Resource Management, Administration	27165	R477-6	AMD	07/02/2004	2004-11/37
	27345	R590-102	AMD	10/07/2004	2004-17/14
	26787	R590-102	AMD	01/08/2004	2003-23/39
	26882	R590-102-5	NSC	02/01/2004	Not Printed
	27134	R590-160-5	NSC	07/01/2004	Not Printed
	27126	R590-166	5YR	04/28/2004	2004-10/39
	27451	R590-167	5YR	09/28/2004	2004-20/86
	26812	R590-170	NSC	01/01/2004	Not Printed
	26976	R590-170	5YR	03/01/2004	2004-6/62
	27082	R590-229	CPR	10/07/2004	2004-17/53
	27083	R590-230	NEW	06/03/2004	2004-9/14

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	27449	R590-129	5YR	09/28/2004	2004-20/85
insurance law					
Insurance, Administration	27452	R590-67	5YR	09/28/2004	2004-20/82
	27447	R590-79	5YR	09/27/2004	2004-20/84
	27450	R590-83	5YR	09/28/2004	2004-20/84
	26978	R590-86	REP	04/23/2004	2004-6/53
	27121	R590-93	5YR	04/28/2004	2004-10/38
	27122	R590-98	5YR	04/28/2004	2004-10/39
	27113	R590-190	5YR	04/26/2004	2004-10/40
	27114	R590-190-1	NSC	05/01/2004	Not Printed
	27115	R590-191	5YR	04/26/2004	2004-10/40
	27116	R590-191-1	NSC	05/01/2004	Not Printed
	27319	R590-192	5YR	07/30/2004	2004-16/33
insurance licensing					
Insurance, Administration	27011	R590-195	5YR	03/19/2004	2004-8/97
	27010	R590-195	NSC	06/01/2004	Not Printed
interconnection					
Public Service Commission, Administration	26826	R746-348-6	AMD	04/13/2004	2003-24/65
	26883	R746-365	5YR	01/06/2004	2004-3/49
interest buy-downs					
Environmental Quality, Drinking Water	26974	R309-700	AMD	08/06/2004	2004-6/31
	26974	R309-700	CPR	08/06/2004	2004-13/53
Internet access					
Community and Economic Development, Community Development, Library	27125	R223-2-2	AMD	09/08/2004	2004-10/17
interstate highway system					
Transportation, Administration	26878	R907-64	5YR	01/05/2004	2004-3/49
	26879	R907-65	5YR	01/05/2004	2004-3/50
inventories					
Environmental Quality, Air Quality	26942	R307-150	5YR	02/09/2004	2004-5/43
investment advisers					
Money Management Council, Administration	26676	R628-19	CPR	02/10/2004	2004-1/38
	26676	R628-19	NEW	02/10/2004	2003-20/27
IT Planning					
Governor, Planning and Budget, Chief Information Officer	27108	R365-6	NEW	06/28/2004	2004-10/18
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Human Resource Management, Administration	27162	R477-3	AMD	07/02/2004	2004-11/32

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	27262	R547-3	NSC	07/01/2004	Not Printed
	27264	R547-6	NSC	07/01/2004	Not Printed
	27265	R547-7	NSC	07/01/2004	Not Printed
	27284	R547-10	NSC	07/01/2004	Not Printed
	27266	R547-12	NSC	07/01/2004	Not Printed
	27263	R547-13	NSC	07/01/2004	Not Printed
juvenile detention					
Human Services, Youth Corrections	27263	R547-13	NSC	07/01/2004	Not Printed
juvenile offenders					
Education, Administration	27412	R277-714	5YR	09/07/2004	2004-19/51
laboratories					
Health, Epidemiology and Laboratory Services, Laboratory Services	26968	R438-13	5YR	02/27/2004	2004-6/61
Health, Epidemiology and Laboratory Services, Laboratory Improvement	27234	R444-14	AMD	08/09/2004	2004-13/26
laboratory animals					
Health, Epidemiology and Laboratory Services, Laboratory Services	26968	R438-13	5YR	02/27/2004	2004-6/61
law					
Public Safety, Fire Marshal	27002	R710-9	AMD	05/05/2004	2004-7/23
	26788	R710-9	AMD	01/02/2004	2003-23/72
	26919	R710-9	EMR	01/28/2004	2004-4/70
law enforcement					
Public Safety, Highway Patrol	27100	R714-600	NSC	08/06/2004	Not Printed
	27337	R714-600	5YR	08/06/2004	2004-17/57
law enforcement officer certification					
Public Safety, Administration	26969	R698-4	5YR	02/27/2004	2004-6/62
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Public Safety, Driver License	27362	R708-26	5YR	08/25/2004	2004-18/85
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Human Resource Management, Administration	27166	R477-7	AMD	07/02/2004	2004-11/42
libraries					
Community and Economic Development, Community Development, Library	27125	R223-2-2	AMD	09/08/2004	2004-10/17
license					
Education, Administration	26851	R277-520	R&R	02/05/2004	2004-1/20
	27210	R277-520	AMD	07/16/2004	2004-12/21
	27411	R277-521	5YR	09/07/2004	2004-19/50

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	26678	R156-1	NSC	01/01/2004	Not Printed
	26805	R156-1-106	AMD	01/20/2004	2003-24/4
	27103	R156-1-302	NSC	06/01/2004	Not Printed
	26917	R156-5a	5YR	01/27/2004	2004-4/74
	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
	27019	R156-26a-303b	AMD	05/24/2004	2004-8/32
	26916	R156-37c	5YR	01/27/2004	2004-4/74
	27020	R156-38	AMD	07/26/2004	2004-8/39
	27020	R156-38	CPR	07/26/2004	2004-12/73
	26834	R156-38	AMD	02/03/2004	2004-1/5
	26915	R156-39a	5YR	01/27/2004	2004-4/75
	27400	R156-42a	5YR	09/02/2004	2004-19/48
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	27247	R156-46a	5YR	06/24/2004	2004-14/56
	26937	R156-47b	AMD	06/07/2004	2004-5/5
	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
	27112	R156-55b	AMD	06/15/2004	2004-10/6
	27188	R156-55d-302f	AMD	10/05/2004	2004-12/4
	27188	R156-55d-302f	CPR	10/05/2004	2004-17/47
	26866	R156-56	NSC	01/01/2004	Not Printed
	26693	R156-56	AMD	01/01/2004	2003-21/7
	27101	R156-56	AMD	08/17/2004	2004-9/5
	27101	R156-56	CPR	08/17/2004	2004-14/37
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
	27285	R156-60a	AMD	09/01/2004	2004-15/17
	27225	R156-61	5YR	06/10/2004	2004-13/67
	26888	R156-63	AMD	03/04/2004	2004-3/5
	26956	R156-68	AMD	04/15/2004	2004-6/2
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	27140	R156-71-202	NSC	06/01/2004	Not Printed
	26927	R156-74	5YR	02/02/2004	2004-4/75
	26777	R156-76-102	AMD	01/20/2004	2003-23/14
Human Services, Administration, Administrative Services, Licensing	27008	R501-1	NSC	04/01/2004	Not Printed
	27135	R501-2	NSC	07/01/2004	Not Printed
	26925	R501-2	AMD	03/17/2004	2004-4/16
	27229	R501-7	AMD	08/05/2004	2004-13/28
	26904	R501-7	AMD	05/28/2004	2004-4/22
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	26874	R501-16	NSC	05/01/2004	Not Printed
	26804	R501-16	AMD	04/12/2004	2003-24/29
Human Services, Youth Corrections	27261	R547-1	NSC	07/01/2004	Not Printed
	27265	R547-7	NSC	07/01/2004	Not Printed
Labor Commission, Antidiscrimination and Labor, Labor	27228	R610-4	5YR	06/11/2004	2004-13/71
Natural Resources, Wildlife Resources	27158	R657-27	AMD	07/02/2004	2004-11/77
Public Safety, Driver License	27360	R708-10	5YR	08/25/2004	2004-18/84
	27051	R708-10	NSC	06/01/2004	Not Printed
	27365	R708-24	5YR	08/25/2004	2004-18/85
liens					
Commerce, Occupational and Professional Licensing	27020	R156-38	CPR	07/26/2004	2004-12/73
	27020	R156-38	AMD	07/26/2004	2004-8/39
	26834	R156-38	AMD	02/03/2004	2004-1/5
life insurance filings					
Insurance, Administration	26951	R590-226	NEW	04/08/2004	2004-5/14
liquefied petroleum gas					
Public Safety, Fire Marshal	26801	R710-6	AMD	01/16/2004	2003-24/63
	26938	R710-6-1	AMD	04/01/2004	2004-5/32
	27351	R710-6-6	AMD	10/04/2004	2004-17/27
loans					
Environmental Quality, Drinking Water	26974	R309-700	CPR	08/06/2004	2004-13/53
	26974	R309-700	AMD	08/06/2004	2004-6/31
	26975	R309-705	CPR	08/06/2004	2004-13/57
	26760	R309-705	AMD	01/01/2004	2003-22/19
	26975	R309-705	AMD	08/06/2004	2004-6/39
Environmental Quality, Water Quality	27180	R317-103	REP	08/20/2004	2004-11/16
lt. governor					
Lieutenant Governor, Administration	27221	R622-2	5YR	06/09/2004	2004-13/71
MACT					
Environmental Quality, Air Quality	26939	R307-214	5YR	02/09/2004	2004-5/44
	26887	R307-214	NSC	02/09/2004	Not Printed
	27293	R307-214-2	AMD	10/07/2004	2004-15/28
management					
Natural Resources, Forestry, Fire and State Lands	26865	R652-40-1800	AMD	02/24/2004	2004-2/2
	27070	R652-41-1300	AMD	06/04/2004	2004-9/17
massage therapy					
Commerce, Occupational and Professional Licensing	26937	R156-47b	AMD	06/07/2004	2004-5/5

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mediation					
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Medicaid					
Health, Health Care Financing, Coverage and Reimbursement Policy	26955	R414-1-5	AMD	05/19/2004	2004-6/47
	27189	R414-1-14	AMD	07/19/2004	2004-12/52
	27023	R414-1A	AMD	05/25/2004	2004-8/68
	27227	R414-1B	NEW	10/06/2004	2004-13/4
	27227	R414-1B	CPR	10/06/2004	2004-17/48
	27222	R414-1B	EMR	06/09/2004	2004-13/64
	26854	R414-9	NEW	02/03/2004	2004-1/26
	27151	R414-9	NSC	06/01/2004	Not Printed
	27482	R414-14	5YR	10/06/2004	Not Printed
	27481	R414-14A	5YR	10/06/2004	Not Printed
	27315	R414-26	REP	09/16/2004	2004-16/10
	27483	R414-31	5YR	10/06/2004	Not Printed
	26964	R414-49	AMD	05/07/2004	2004-6/48
	27176	R414-49	AMD	07/02/2004	2004-11/17
	26802	R414-50	AMD	01/28/2004	2003-24/13
	26782	R414-51	AMD	01/28/2004	2003-23/25
	26798	R414-52	AMD	01/01/2004	2003-23/27
	26783	R414-53	AMD	01/28/2004	2003-23/28
	26803	R414-54	AMD	01/28/2004	2003-24/14
	27012	R414-54	5YR	03/23/2004	2004-8/94
	27049	R414-55	AMD	06/17/2004	2004-8/69
	27231	R414-71	NEW	08/05/2004	2004-13/5
	27316	R414-90	NEW	09/16/2004	2004-16/17
	26809	R414-99	NEW	02/17/2004	2003-24/15
	27314	R414-140	NEW	09/16/2004	2004-16/19
	26811	R414-300	NEW	02/10/2004	2003-24/17
	26781	R414-304	AMD	01/01/2004	2003-23/29
	26965	R414-305-3	AMD	05/07/2004	2004-6/50
	26810	R414-310	AMD	02/10/2004	2003-24/18
	27143	R414-401	NEW	07/02/2004	2004-11/19
	27370	R414-501	5YR	08/27/2004	2004-18/82
	27371	R414-502	5YR	08/27/2004	2004-18/82
	27373	R414-503	5YR	08/27/2004	2004-18/83
	27325	R414-504	AMD	09/15/2004	2004-16/20
	27171	R414-504	AMD	07/02/2004	2004-11/20
medical transportation					
Health, Health Care Financing, Coverage and Reimbursement Policy	27216	R414-306	AMD	07/19/2004	2004-12/53
midwifery					
Commerce, Occupational and Professional Licensing	27224	R156-44a	5YR	06/10/2004	2004-13/66

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military voter					
Lieutenant Governor, Elections	27406	R623-4	EMR	09/10/2004	2004-19/45
minerals reclamation					
Natural Resources, Oil, Gas and Mining; Non-Coal	27015	R647-1-106	AMD	06/01/2004	2004-8/74
	27016	R647-6	NEW	06/01/2004	2004-8/76
	27017	R647-7	NEW	06/01/2004	2004-8/79
	27018	R647-8	NEW	06/01/2004	2004-8/83
motor carrier					
Public Safety, Highway Patrol	27337	R714-600	5YR	08/06/2004	2004-17/57
	27100	R714-600	NSC	08/06/2004	Not Printed
motor fuel					
Tax Commission, Auditing	27269	R865-13G-10	AMD	09/14/2004	2004-14/32
motorcycle rider training schools					
Public Safety, Driver License	26918	R708-30	5YR	01/27/2004	2004-4/76
natural resources					
Natural Resources, Forestry, Fire and State Lands	26865	R652-40-1800	AMD	02/24/2004	2004-2/2
	27070	R652-41-1300	AMD	06/04/2004	2004-9/17
naturopathic physician					
Commerce, Occupational and Professional Licensing	27140	R156-71-202	NSC	06/01/2004	Not Printed
	26998	R156-71-202	AMD	05/04/2004	2004-7/3
naturopaths					
Commerce, Occupational and Professional Licensing	26998	R156-71-202	AMD	05/04/2004	2004-7/3
	27140	R156-71-202	NSC	06/01/2004	Not Printed
NCLB					
Education, Administration	26853	R277-524	NEW	02/05/2004	2004-1/25
network interconnection					
Public Service Commission, Administration	26826	R746-348-6	AMD	04/13/2004	2003-24/65
newborns screening					
Health, Community and Family Health Services, Children with Special Health Care Needs	27443	R398-1	5YR	09/22/2004	2004-20/77
noise					
Transportation, Preconstruction	27156	R930-3	AMD	07/20/2004	2004-11/84
noise walls					
Transportation, Preconstruction	27156	R930-3	AMD	07/20/2004	2004-11/84
nonprofit organization					
Workforce Services, Workforce Information and Payment Services	27297	R994-309	5YR	07/14/2004	2004-15/66
nurseries (agricultural)					
Agriculture and Food, Plant Industry	27320	R68-6	AMD	09/15/2004	2004-16/5

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nursing facility					
Health, Health Care Financing, Coverage and Reimbursement Policy	27143	R414-401	NEW	07/02/2004	2004-11/19
nutrition					
Education, Administration	26830	R277-720	AMD	01/15/2004	2003-24/10
	26848	R277-720	NSC	02/01/2004	Not Printed
occupational licensing					
Commerce, Occupational and Professional Licensing	27358	R156-1	EMR	08/24/2004	2004-18/79
	26678	R156-1	NSC	01/01/2004	Not Printed
	26805	R156-1-106	AMD	01/20/2004	2003-24/4
	27103	R156-1-302	NSC	06/01/2004	Not Printed
	27112	R156-55b	AMD	06/15/2004	2004-10/6
occupational therapy					
Commerce, Occupational and Professional Licensing	27400	R156-42a	5YR	09/02/2004	2004-19/48
off-highway vehicles					
Natural Resources, Parks and Recreation	27304	R651-406	AMD	10/01/2004	2004-15/51
	27183	R651-411	NEW	07/19/2004	2004-12/61
	27181	R651-601-17	AMD	07/19/2004	2004-12/62
	27185	R651-615-7	AMD	07/19/2004	2004-12/65
offset					
Environmental Quality, Air Quality	27107	R307-420	NSC	06/08/2004	Not Printed
	27218	R307-420	5YR	06/08/2004	2004-13/69
online testing					
Education, Administration	27202	R277-402	NEW	07/16/2004	2004-12/5
operating permits					
Environmental Quality, Air Quality	26940	R307-415	5YR	02/09/2004	2004-5/45
	26947	R307-415-6c	CPR	08/03/2004	2004-13/52
	26947	R307-415-6c	AMD	08/03/2004	2004-5/10
	26941	R307-417	5YR	02/09/2004	2004-5/45
operator certification					
Environmental Quality, Water Quality	27022	R317-10	AMD	06/23/2004	2004-8/52
optometry					
Health, Health Care Financing, Coverage and Reimbursement Policy	26798	R414-52	AMD	01/01/2004	2003-23/27
organ transplants					
Health, Health Care Financing, Coverage and Reimbursement Policy	26935	R414-58	5YR	02/03/2004	2004-5/46
orthodontia					
Health, Health Care Financing, Coverage and Reimbursement Policy	26782	R414-51	AMD	01/28/2004	2003-23/25
osteopathic physician					
Commerce, Occupational and Professional Licensing	26956	R156-68	AMD	04/15/2004	2004-6/2

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osteopaths					
Commerce, Occupational and Professional Licensing	26956	R156-68	AMD	04/15/2004	2004-6/2
overpayments					
Workforce Services, Workforce Information and Payment Services	27237	R994-305-801	AMD	08/03/2004	2004-13/49
	26924	R994-406	AMD	04/04/2004	2004-4/45
overseas citizen voter					
Lieutenant Governor, Elections	27406	R623-4	EMR	09/10/2004	2004-19/45
overtime					
Human Resource Management, Administration	27167	R477-8	AMD	07/02/2004	2004-11/50
ozone					
Environmental Quality, Air Quality	26983	R307-110-12	NSC	05/18/2004	Not Printed
	26896	R307-110-12	AMD	05/18/2004	2004-3/12
	26896	R307-110-12	CPR	05/18/2004	2004-8/87
	26946	R307-110-28	AMD	06/08/2004	2004-5/9
	26898	R307-110-31	AMD	05/18/2004	2004-3/13
	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	27296	R307-110-33	AMD	10/07/2004	2004-15/24
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26899	R307-110-34	AMD	05/18/2004	2004-3/14
	26897	R307-301	AMD	05/18/2004	2004-3/15
	27219	R307-343	5YR	06/08/2004	2004-13/69
	27144	R307-343	NSC	06/08/2004	Not Printed
	27107	R307-420	NSC	06/08/2004	Not Printed
	27218	R307-420	5YR	06/08/2004	2004-13/69
paleontological resources					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	26913	R807-1	5YR	01/26/2004	2004-4/77
paraprofessional qualifications					
Education, Administration	26853	R277-524	NEW	02/05/2004	2004-1/25
parental rights					
Human Services, Administration	26936	R495-882	NEW	06/29/2004	2004-5/13
parks					
Natural Resources, Parks and Recreation	27153	R651-407	AMD	07/05/2004	2004-11/71
	27183	R651-411	NEW	07/19/2004	2004-12/61
	27181	R651-601-17	AMD	07/19/2004	2004-12/62
	27305	R651-611	AMD	09/01/2004	2004-15/52
	27184	R651-611	AMD	07/19/2004	2004-12/62
	26948	R651-611	AMD	04/01/2004	2004-5/29
	26776	R651-611	AMD	01/06/2004	2003-23/52
	27185	R651-615-7	AMD	07/19/2004	2004-12/65
	27154	R651-619-2	AMD	07/05/2004	2004-11/72
	27152	R651-626	AMD	07/05/2004	2004-11/73

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	27306	R651-634-1	AMD	09/01/2004	2004-15/54
parole					
Human Services, Youth Corrections	27264	R547-6	NSC	07/01/2004	Not Printed
particulate matter					
Environmental Quality, Air Quality	26983	R307-110-12	NSC	05/18/2004	Not Printed
	26896	R307-110-12	AMD	05/18/2004	2004-3/12
	26896	R307-110-12	CPR	05/18/2004	2004-8/87
	26946	R307-110-28	AMD	06/08/2004	2004-5/9
	26898	R307-110-31	AMD	05/18/2004	2004-3/13
	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	27296	R307-110-33	AMD	10/07/2004	2004-15/24
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26899	R307-110-34	AMD	05/18/2004	2004-3/14
	26897	R307-301	AMD	05/18/2004	2004-3/15
pedestrians					
Regents (Board Of), University of Utah, Administration	26914	R805-1	5YR	01/27/2004	2004-4/76
peer review					
Commerce, Occupational and Professional Licensing	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
	27019	R156-26a-303b	AMD	05/24/2004	2004-8/32
per diem allowances					
Administrative Services, Finance	27120	R25-7	AMD	07/01/2004	2004-10/4
	27164	R25-7-6	AMD	07/02/2004	2004-11/4
permits					
Natural Resources, Wildlife Resources	27239	R657-42	AMD	08/03/2004	2004-13/41
	26820	R657-42	AMD	01/21/2004	2003-24/61
	27240	R657-50	AMD	08/03/2004	2004-13/44
Transportation, Motor Carrier, Ports of Entry	26881	R912-14	5YR	01/05/2004	2004-3/51
permitting authority					
Environmental Quality, Air Quality	26941	R307-417	5YR	02/09/2004	2004-5/45
personal property					
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
	27190	R884-24P-24	AMD	08/02/2004	2004-12/66
personnel management					
Human Resource Management, Administration	27160	R477-1	AMD	07/02/2004	2004-11/23
	27172	R477-5	NSC	07/01/2004	Not Printed
	27165	R477-6	AMD	07/02/2004	2004-11/37
	27168	R477-9	AMD	07/02/2004	2004-11/53
	27170	R477-12	AMD	07/02/2004	2004-11/57
	27174	R477-14	NSC	06/01/2004	Not Printed

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petroleum					
Environmental Quality, Environmental Response and Remediation	27194	R311-200	AMD	09/09/2004	2004-12/27
	27195	R311-201	AMD	09/09/2004	2004-12/30
	27196	R311-203	AMD	09/09/2004	2004-12/34
	27197	R311-204	AMD	09/09/2004	2004-12/37
	27198	R311-205	AMD	09/09/2004	2004-12/39
	27199	R311-206	AMD	09/09/2004	2004-12/44
	27200	R311-212	AMD	09/09/2004	2004-12/48
pharmacies					
Commerce, Occupational and Professional Licensing	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
pharmacists					
Commerce, Occupational and Professional Licensing	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
physician					
Health, Health Care Financing, Coverage and Reimbursement Policy	27227	R414-1B	NEW	10/06/2004	2004-13/4
	27222	R414-1B	EMR	06/09/2004	2004-13/64
physicians					
Health, Health Care Financing, Coverage and Reimbursement Policy	27227	R414-1B	CPR	10/06/2004	2004-17/48
planning					
Administrative Services, Facilities Construction and Management	27313	R23-3	5YR	07/28/2004	2004-16/33
podiatric physician					
Commerce, Occupational and Professional Licensing	26917	R156-5a	5YR	01/27/2004	2004-4/74
podiatrists					
Commerce, Occupational and Professional Licensing	26917	R156-5a	5YR	01/27/2004	2004-4/74
point-system					
Public Safety, Driver License	27251	R708-3	AMD	08/17/2004	2004-14/30
	27142	R708-3	EMR	05/05/2004	2004-11/88
position classifications					
Human Resource Management, Administration	27162	R477-3	AMD	07/02/2004	2004-11/32
postsecondary school					
Commerce, Consumer Protection	26905	R152-34	AMD	05/20/2004	2004-4/2
precursor					
Commerce, Occupational and Professional Licensing	26916	R156-37c	5YR	01/27/2004	2004-4/74
primary care					
Health, Health Care Financing, Coverage and Reimbursement Policy	26810	R414-310	AMD	02/10/2004	2003-24/18

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primary care network					
Health, Health Care Financing, Coverage and Reimbursement Policy	26811	R414-300	NEW	02/10/2004	2003-24/17
private security officers					
Commerce, Occupational and Professional Licensing	26888	R156-63	AMD	03/04/2004	2004-3/5
procurement					
Administrative Services, Facilities Construction and Management	27313	R23-3	5YR	07/28/2004	2004-16/33
professional competency					
Education, Administration	26827	R277-502	AMD	01/15/2004	2003-24/6
	27207	R277-502	AMD	07/16/2004	2004-12/14
	27208	R277-510	REP	07/16/2004	2004-12/18
	27213	R277-511	REP	07/16/2004	2004-12/19
	27209	R277-512	REP	07/16/2004	2004-12/20
	26981	R277-514	AMD	04/15/2004	2004-6/10
professional development days					
Education, Administration	27203	R277-418	NEW	07/16/2004	2004-12/7
professional education					
Education, Administration	27410	R277-504	5YR	09/07/2004	2004-19/50
	27000	R277-518	AMD	05/05/2004	2004-7/8
professional engineers					
Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
professional geologists					
Commerce, Occupational and Professional Licensing	26777	R156-76-102	AMD	01/20/2004	2003-23/14
professional land surveyors					
Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
professional staff					
Education, Administration	26828	R277-486	NEW	01/15/2004	2003-24/5
program benefits					
Health, Health Care Financing, Coverage and Reimbursement Policy	27216	R414-306	AMD	07/19/2004	2004-12/53
prohibited devices					
Human Services, Youth Corrections	27267	R547-14	NSC	07/01/2004	Not Printed
prohibited items					
Human Services, Youth Corrections	27267	R547-14	NSC	07/01/2004	Not Printed
prohibited items and devices					
Human Services, Mental Health	27258	R523-1	NSC	07/01/2004	Not Printed
	27117	R523-1-10	AMD	06/17/2004	2004-10/21
	27118	R523-1-16	AMD	06/17/2004	2004-10/23
	27257	R523-1-22	AMD	08/17/2004	2004-14/25
Human Services, Youth Corrections	27261	R547-1	NSC	07/01/2004	Not Printed

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property casualty insurance filing					
Insurance, Administration	26821	R590-225	NEW	03/24/2004	2003-24/38
	26821	R590-225	CPR	03/24/2004	2004-4/64
property tax					
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
	27190	R884-24P-24	AMD	08/02/2004	2004-12/66
prosecution					
Workforce Services, Workforce Information and Payment Services	26923	R994-104	REP	04/04/2004	2004-4/41
psychologists					
Commerce, Occupational and Professional Licensing	27225	R156-61	5YR	06/10/2004	2004-13/67
public buildings					
Administrative Services, Facilities Construction and Management	27313	R23-3	5YR	07/28/2004	2004-16/33
Public Safety, Fire Marshal	26920	R710-4	EMR	01/28/2004	2004-4/66
	26793	R710-4	AMD	01/02/2004	2003-23/67
	27003	R710-4	AMD	05/05/2004	2004-7/19
public education					
Education, Administration	27214	R277-105	5YR	06/01/2004	2004-12/79
	26871	R277-437	5YR	01/05/2004	2004-3/42
	27205	R277-438	5YR	06/01/2004	2004-12/79
	27408	R277-462	5YR	09/07/2004	2004-19/49
	26850	R277-462	AMD	02/05/2004	2004-1/16
	27412	R277-714	5YR	09/07/2004	2004-19/51
	26870	R277-735	5YR	01/05/2004	2004-3/43
public funds					
Money Management Council, Administration	26676	R628-19	CPR	02/10/2004	2004-1/38
	26676	R628-19	NEW	02/10/2004	2003-20/27
public health					
Health, Epidemiology and Laboratory Services, Environmental Services	27187	R392-101	5YR	05/24/2004	2004-12/80
public information					
Human Resource Management, Administration	27161	R477-2	AMD	07/02/2004	2004-11/29
public input in policy					
Human Services, Child and Family Services	27014	R512-3	NSC	03/04/2004	Not Printed
	26774	R512-3	NSC	03/04/2004	Not Printed
public library					
Community and Economic Development, Community Development, Library	27125	R223-2-2	AMD	09/08/2004	2004-10/17
public schools					
Education, Administration	27409	R277-463	5YR	09/07/2004	2004-19/49
	27212	R277-916	5YR	06/01/2004	2004-12/80

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public utilities					
Public Service Commission, Administration	26849	R746-100	CPR	04/01/2004	2004-5/36
	26849	R746-100	AMD	04/01/2004	2004-1/28
	26883	R746-365	5YR	01/06/2004	2004-3/49
rabbits					
Natural Resources, Wildlife Resources	27283	R657-6	AMD	09/01/2004	2004-15/55
radiation					
Environmental Quality, Radiation Control	27110	R313-25-25	NSC	05/01/2004	Not Printed
radioactive waste disposal					
Environmental Quality, Radiation Control	27110	R313-25-25	NSC	05/01/2004	Not Printed
radiology practical technicians					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
radiology technologists					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
rates					
Labor Commission, Industrial Accidents	26697	R612-4-2	AMD	01/01/2004	2003-21/64
real estate appraisal					
Commerce, Real Estate	27241	R162-103	AMD	10/07/2004	2004-14/2
real estate appraisals					
Commerce, Real Estate	27132	R162-101-2	AMD	09/10/2004	2004-10/10
	26890	R162-105	5YR	01/13/2004	2004-3/42
	27131	R162-105	AMD	09/10/2004	2004-10/11
	27098	R162-106-8	AMD	07/28/2004	2004-9/11
	27128	R162-107	AMD	09/10/2004	2004-10/13
real estate brokers					
Commerce, Real Estate	26835	R162-7-3	AMD	02/18/2004	2004-1/9
real estate business					
Commerce, Real Estate	27026	R162-3	AMD	05/20/2004	2004-8/44
	26944	R162-6-2	AMD	04/21/2004	2004-5/6
	27009	R162-6-2	NSC	04/21/2004	Not Printed
reclamation					
Natural Resources, Oil, Gas and Mining; Coal	26710	R645-301-100	AMD	02/06/2004	2003-22/34
	26711	R645-301-500	AMD	02/06/2004	2003-22/35
	26712	R645-303-200	AMD	02/06/2004	2003-22/36
	26713	R645-401	AMD	02/06/2004	2003-22/38
records appeal hearings					
Administrative Services, Records Committee	26973	R35-1	NSC	07/02/2004	Not Printed

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	27278	R35-2	5YR	07/02/2004	2004-15/62
	27279	R35-3	5YR	07/02/2004	2004-15/63
	27280	R35-4	5YR	07/02/2004	2004-15/63
	27281	R35-5	5YR	07/02/2004	2004-15/64
	27282	R35-6	5YR	07/02/2004	2004-15/64
recreation					
Natural Resources, Wildlife Resources	26819	R657-38	AMD	01/21/2004	2003-24/56
reemployment workers' compensation guidelines					
Labor Commission, Industrial Accidents	27459	R612-8	5YR	09/30/2004	2004-20/87
registration					
Commerce, Consumer Protection	26905	R152-34	AMD	05/20/2004	2004-4/2
rehabilitation					
Education, Rehabilitation	26873	R280-202	5YR	01/05/2004	2004-3/44
reimbursement					
Health, Health Care Financing, Coverage and Reimbursement Policy	26854	R414-9	NEW	02/03/2004	2004-1/26
	27151	R414-9	NSC	06/01/2004	Not Printed
religious activities					
Tax Commission, Auditing	27063	R865-19S-1	AMD	06/29/2004	2004-9/27
	27226	R865-19S-7	AMD	09/14/2004	2004-13/48
	27064	R865-19S-12	AMD	06/29/2004	2004-9/28
	27068	R865-19S-23	AMD	06/29/2004	2004-9/30
	27071	R865-19S-28	AMD	06/29/2004	2004-9/31
	27072	R865-19S-30	AMD	06/29/2004	2004-9/32
	27095	R865-19S-45	AMD	06/29/2004	2004-9/34
	27080	R865-19S-58	AMD	06/29/2004	2004-9/37
	27053	R865-19S-70	AMD	06/29/2004	2004-9/40
	27074	R865-19S-86	AMD	06/29/2004	2004-9/45
	27085	R865-19S-92	AMD	06/29/2004	2004-9/47
	27086	R865-19S-98	AMD	06/29/2004	2004-9/48
	27088	R865-19S-107	AMD	06/29/2004	2004-9/50
	27090	R865-19S-114	AMD	06/29/2004	2004-9/52
	27091	R865-19S-115	AMD	06/29/2004	2004-9/53
	27097	R865-19S-116	AMD	06/29/2004	2004-9/54
	27096	R865-19S-117	AMD	06/29/2004	2004-9/54
	27099	R865-19S-118	AMD	06/29/2004	2004-9/55
replacement providers					
Public Service Commission, Administration	26901	R746-350	NSC	03/01/2004	Not Printed
	26785	R746-350	NEW	01/15/2004	2003-23/79
reporting					
Education, Administration	27409	R277-463	5YR	09/07/2004	2004-19/49

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reporting requirements and procedures					
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reports					
Education, Administration	26688	R277-484	NSC	01/01/2004	Not Printed
Environmental Quality, Air Quality	26942	R307-150	5YR	02/09/2004	2004-5/43
reservoirs					
Natural Resources, Water Rights	26844	R655-11	NSC	01/01/2004	Not Printed
residential mortgage loan origination					
Commerce, Real Estate	27129	R162-201	NEW	06/29/2004	2004-10/15
	27130	R162-202	AMD	06/29/2004	2004-10/15
	26837	R162-202	AMD	02/03/2004	2004-1/10
	26909	R162-203	AMD	04/12/2004	2004-4/7
	26908	R162-204	AMD	04/12/2004	2004-4/8
	26907	R162-205	AMD	04/12/2004	2004-4/9
	27352	R162-205	AMD	10/07/2004	2004-17/11
	26840	R162-206	NEW	02/03/2004	2004-1/12
	26839	R162-207	NEW	02/03/2004	2004-1/13
	26836	R162-208	NEW	02/03/2004	2004-1/14
	26906	R162-209	AMD	04/12/2004	2004-4/10
restaurants					
Tax Commission, Auditing	27056	R865-12L-7	AMD	06/29/2004	2004-9/20
	27060	R865-12L-15	AMD	06/29/2004	2004-9/24
	27061	R865-12L-16	AMD	06/29/2004	2004-9/25
	27062	R865-12L-17	AMD	06/29/2004	2004-9/26
rights-of-way					
Transportation, Administration	26878	R907-64	5YR	01/05/2004	2004-3/49
	26879	R907-65	5YR	01/05/2004	2004-3/50
rules and procedures					
Education, Administration	26958	R277-102	5YR	02/26/2004	2004-6/58
Education, Rehabilitation	27342	R280-150	5YR	08/10/2004	2004-17/56
Health, Epidemiology and Laboratory Services, Epidemiology	27024	R386-702	AMD	06/11/2004	2004-8/60
Human Resource Management, Administration	27160	R477-1	AMD	07/02/2004	2004-11/23
	27170	R477-12	AMD	07/02/2004	2004-11/57
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	27245	R708-2	EMR	07/01/2004	2004-14/52
	27246	R708-2	AMD	08/17/2004	2004-14/27
Public Service Commission, Administration	26849	R746-100	CPR	04/01/2004	2004-5/36
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	26674	R616-2-3	AMD	01/01/2004	2003-20/25
	26966	R616-3-3	AMD	04/15/2004	2004-6/56
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	27053	R865-19S-70	AMD	06/29/2004	2004-9/40
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	26897	R307-301	AMD	05/18/2004	2004-3/15
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	26814	R655-13	NEW	03/25/2004	2003-24/43
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Administrative Services, Fleet Operations, Surplus Property	26843	R28-3	AMD	02/12/2004	2004-1/4
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	27092	R865-21U-1	AMD	06/29/2004	2004-9/56
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	26785	R746-350	NEW	01/15/2004	2003-23/79
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