# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.state.ut.us/

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.state.ut.us/publicat/digest.htm for additional information.

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# SPECIAL NOTICES

**Community and Economic Development**
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**Public Notice of Available Utah State Publications**

The Utah State Library Division has made available Utah State Publications List No. 02-03, dated February 1, 2002 (http://library.utah.gov/02-03.html). For a copy of the complete list, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773; or view it on the World Wide Web at the address above.

**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 February 2, 2002, 12:00 a.m., and February 15, 2002, 11:59 p.m. are included in this, the March 1, 2002, 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 Rules being repealed are completely struck out.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 April 1, 2002. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through June 29, 2002, 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.

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**The Proposed Rules Begin on the Following Page.**

# Agriculture and Food, Animal Industry
# R58-6
## Poultry

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24486
FILED: 02/13/2002, 13:20

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt 9 CFR 147.23, 147.24, and 147.25, 2001 edition.

SUMMARY OF THE RULE OR CHANGE: The Department of Agriculture and Food is adopting 9 CFR 147.23, Hatchery Sanitation; 9 CFR 147.24, Cleaning and Disinfecting; and 9 CFR 147.25, Fumigation, 2001 edition. These sections are being adopted as an effective program for the prevention and control of Salmonella and other infections within the poultry industry.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-29-1

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 9 CFR 147.23, 147.24, and 147.25, 2001 edition

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no cost to the state budget. The amendments to this rule are requirements for the sanitation, cleaning and disinfecting, and fumigation of hatchery buildings.
❖ LOCAL GOVERNMENTS: There will be no cost to local government. The amendments to this rule are requirements for the sanitation, cleaning and disinfecting, and fumigation of hatchery buildings.
❖ OTHER PERSONS: There is no cost or savings associated with the amendments to this rule. The amendments to this rule are merely clarifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost or savings associated with the amendments to this rule. The amendments to this rule are merely clarifications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be not cost associated with the amendments to this rule. The amendments are measures taken to protect the consumer from Salmonella and other infections within the poultry industry.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mike Marshall or Marolyn Leetham at the above address, by phone at 801-538-7160 or 801-538-7114, by FAX at 801-538-7169 or 801-538-7126, or by Internet E-mail at agmain.mmarshall@state.ut.us or agmain.mleetham@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Cary Peterson, Commissioner

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**R58. Agriculture and Food, Animal Industry.**
**R58-6. Poultry.**
**R58-6-1. Authority.**
Promulgated under authority of Section 4-29-1.

**R58-6-2. Definition of Poultry.**
Domesticated fowl, including chickens, turkeys, waterfowl, ratites, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat.

**R58-6-3. Certificate of Veterinary Inspection.**
All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan Certificate and an entry permit; except birds for immediate slaughter consigned directly to a licensed slaughtering establishment. For an entry permit, this number may be called during business hours: (801) 538-7164.

**R58-6-4. Pullorum-Typhoid Rating for Imported Poultry.**
A. No poultry, hatching eggs or baby chicks shall be brought, shipped, or otherwise introduced into the State of Utah by any person, individual or corporation that does not originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state or country of origin, or
B. Poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for Salmonella Pullorum, Mycoplasma gallisepticum (MG),M. synoviae (MS), M. meleagridis (MM), within the last 30 days.

**R58-6-5. Boxes, Crates and Containers.**
Poultry or chicken boxes, crates and containers shall be new or disinfected before being used to move replacement birds into the State of Utah, except birds of the same and known health status as the previous shipment, and identified with a label cooperating in National Poultry Improvement Plan.

**R58-6-6. Import Permit.**
No permit shall be issued for importation until the Utah Department of Agriculture and Food receives responsible and complete information from the consignor that the birds to be imported would not present a disease hazard to Utah flocks.

**R58-6-7. Quarantine of Diseased Poultry.**

The Commissioner may quarantine diseased poultry, whenever any infectious or contagious diseases have been identified. The quarantine notice shall be posted in a conspicuous place on the outside of the coops and premises.

A. The coops and surroundings must be maintained in a sanitary condition.

B. No live poultry shall under any circumstances be removed from the quarantined coop or premises, except under permit from the State Department of Agriculture and Food or its authorized representative.

C. All dead birds shall be destroyed by burning or by being placed in a pit properly constructed for disposal of dead birds.

D. The attendant shall wear rubber footwear which shall be disinfected in a disinfectant recognized by U.S. Department of Agriculture each time before leaving the infected coops.

E. All crates, utensils or other paraphernalia used around the infected coops shall be thoroughly cleaned and disinfected before being removed from the infected premises; except egg cases and those are to be handled in such manner as may be designated by the attending veterinarian.

F. Truck drivers are forbidden to enter quarantined premises personally or with trucks.

G. No visitors will be allowed on infected premises.

H. All droppings and litter shall be buried or burned or thoroughly disinfected before being removed from the premises.

I. Vaccination shall be done by or under the direction of an accredited veterinarian only.

J. The quarantine shall be in effect until withdrawn by the Commissioner of Agriculture and Food or his designated agent.

**R58-6-8. Cleaning and Disinfecting Feed Bags, Crates, etc.**

A. Bags used for poultry feeds, mashes, etc., shall, before being filled at the mill or mixing plant, be cleaned and disinfected. All filth or litter shall be removed from them and the bags then disinfected with a disinfectant recognized by United States Department of Agriculture 9 CFR 1, [~~147.25~~]147.23, 24, and 25, January 1, [~~1997~~]2001, edition.

B. Crates or other containers used for the transportation of poultry by any poultry producer or anyone buying and selling or otherwise transporting poultry shall be properly scraped, cleaned and disinfected with a disinfectant recognized by United States Department of Agriculture, 9 CFR 1, [~~147.25~~]147.23, 24, 25, January 1, [~~1997~~]2001, edition, each time after being used.

**R58-6-9. Handling or Disposal of Poultry Droppings and Litter.**

A. Poultry houses and yards shall be maintained in a sanitary condition. All droppings and litter shall be cleaned regularly and disposed of either by hauling away and scattering over farm lands, or by burying or burning.

B. In case it is not practical to dispose of the droppings and litter regularly in the above manner, they shall be placed outside the coops and properly screened with fine mesh wire which will protect it from flies until it can be disposed of as provided in this rule.

**KEY: disease control**
**[~~August 15, 1997~~]2002**
**Notice of Continuation June 19, 1997**
**4-29-1**

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# Alcoholic Beverage Control, Administration
# R81-1
## Scope of Definitions, and General Provisions

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24470
FILED: 02/08/2002, 12:02

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it came to light that amendments and deletions were required throughout this rule. (DAR NOTE: The five-year review for R81-1 was published in the January 15, 2002, issue of the Utah State Bulletin under DAR No. 24340.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R81-1-5(2): corrects incomplete information. Section 52-4-6 governs how notice is to be given for agency meetings. In Subsection R81-1-9(4)(b): corrects the name of the agency within the Department of Public Safety that has changed. In Subsection R81-1-9(4)(g)(iv): requires the licensee to correlate the meter readings with the number of drinks sold, not the cost or selling price of the drinks. In Subsection R81-1-9(4)(h)(i): removes superfluous language since it is covered in the subsequent subsection. Subsequent subsection numbering is amended to accommodate the deletion of (i). In Subsection R81-1-9(4)(i): removes the restriction on the size of the sign which is no longer necessary because of the new advertising rules which allow restaurants to openly advertise alcoholic beverages. In Subsection R81-1-10(2)(a): removes superfluous language. The same information is covered in the subsequent subsection. The numbering of subsequent subsections is amended to accommodate for the deletion of (a). In Section R81-1-11: corrects several statutory references that are incorrect. In Section R81-1-12: changes make the rule consistent with recent amendments to Section 62A-8-103.5. In Section R81-1-13: corrects an incorrect statutory reference. In Section R81-1-14: deletes language that is unnecessary since the dates referenced have passed. In Section R81-1-17: language that implied that the rule was suspending or amending statues has been eliminated at the request of the Administrative Rules Review Committee. In Section R81-1-18: deletes this section in its entirety. This was a pilot program established by statute, the duration of which was from July 1, 1998, to June 30, 2000. The program period has now expired.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107; Subsections 32A-3-103(1)(a), 32A-4-103(1)(a), 32A-4-203(1)(a), 32A-5-103(3)(c), 32A-6-103(2)(a), 32A-7-103(2)(a), 32A-8-103(1)(a), 32A-9-103(1)(a), 32A-10-203(1)(a), 32A-11-103(1)(a), and Section 62A-8-103.5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The proposed amendments to this rule are made in an effort to update inaccurate and archaic language and to correct statutory references. None of the amendments substantially change, in practice, how the rule is implemented.
❖ LOCAL GOVERNMENTS: None--The proposed amendments to this rule do not substantially change, in practice, how the rule is implemented. The changes should in no way effect local government.
❖ OTHER PERSONS: None--The proposed amendments to this rule do not substantially change, in practice, how the rule is implemented. The changes should in no way effect any persons or organizations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendments to this rule do not substantially change, in practice, how the rule is implemented. There should be no additional costs to licensees or others as a result to these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments to this rule are made for the purpose of making corrections and bringing the rule in line with statutes. They should not inflict any fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at abcmain.smackay@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

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**R81. Alcoholic Beverage Control, Administration.**
**R81-1. Scope of Definitions, and General Provisions.**
**R81-1-1. Scope and Effective Date.**

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

**R81-1-2. Definitions.**

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor.

(3) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(4) "COUNTER" means a level surface on which patrons consume food.

(5) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(6) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(7) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(8) "DIRECTOR" of a private club means an individual elected by stockholders or members of a private club at an annual meeting to direct organizational and operational policies of the club.

(9) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(10) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled one ounce quantities and has a meter which counts the number of pours served.

(11) "FAIR MARKET VALUE" means the price at which a willing seller and willing buyer will trade under normal conditions. It means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices. Rather, it is a fair, economic, just and equitable value under normal conditions.

(12) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(13) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(14) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(15) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(16) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association. A member and the member's spouse is entitled to all rights and privileges as provided by the club's bylaws or Utah law.

(17) "POINT OF SALE" means that portion of a package agency, restaurant, private club, or selling area for a single event permittee that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(18) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(19) "RESPONDENT" means a department licensee, or

permittee, or employee of a licensee or permittee, against whom a letter of admonishment or notice of agency action is directed.

(20) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(21) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes or rules relating to the manufacture, possession, transportation, distribution and sale of alcoholic beverages, commission rules, and municipal and county ordinances.

(22) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee of a licensee or permittee.

(23) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: the consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others".

**R81-1-3. General Policies.**

(1) Administrative Policy.

The administration of the department shall be nonpartisan and free of partisan political influence, and operated as a public business using sound management principles and practices. The commission and department shall regulate the sale of alcoholic beverages in a manner and at prices which reasonably satisfy the public demand and protect the public interest including the rights of citizens who do not wish to be involved with alcoholic products.

(2) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor over 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.

(3) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(4) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(5) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy.

(6) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Section 15-1-1 for any debt or obligation owed to the department by a licensee, permittee or package agent.

(7) Returned Checks.

The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(a) Insufficient Funds;

(b) Refer to Maker; and

(c) Account Closed.

Receipt of a check payable to the department which is returned by the bank for any of these reasons may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(8) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

**R81-1-4. Employees.**

The department is an Equal Opportunity Employer.

**R81-1-5. Notice of Public Hearings and Meetings.**

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made [~~not less than 24 hours prior to the meeting~~]as provided in Section 52-4-6.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-6.

**R81-1-6. Violation Schedule.**

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their employees and agents who violate statutes and commission rules relating to alcoholic beverages. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee from holding the license. These are fundamental licensing requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee to make payment on or before that date shall result in the immediate suspension of the license or permit until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine.

(iii) Third occurrence of the same type of minor violation: one to five day suspension of the license or permit and/or a $100 to $500 fine.

(iv) More than three minor violations regardless of type: six day suspension to revocation of the license or permit and/or a $500 to $25,000 fine.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine.

(ii) Second occurrence of the same type of moderate violation: three to ten day suspension of the license or permit and/or a $500 to $1000 fine.

(iii) Third occurrence of the same type of moderate violation: ten to 20 day suspension of the license or permit and/or a $1000 to $2000 fine.

(iv) More than three moderate violations regardless of type: 15 day suspension to revocation of the license or permit and/or a $2000 to $25,000 fine.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, and involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The

penalty shall range from a five day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and/or a $500 to $3000 fine.

(ii) Second occurrence of the same type of serious violation: ten to 90 day suspension of the license or permit and/or a $1000 to $9000 fine.

(iii) More than two occurrences of any type of serious violation: 15 day suspension to revocation of the license or permit and/or a $9000 to $25,000 fine.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and/or a $1000 to $25,000 fine.

(ii) More than one occurrence of any type of grave violation: a fifteen day suspension to revocation of the license or permit.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule.

TABLE

| Violation Degree and Frequency | Warning Verbal/Written | | Fine $ Amount | Suspension No. of Days | Revoke License |
|---|---|---|---|---|---|
| Minor | | | | | |
| 1st | X | X | | | |
| 2nd | | | 100 to 500 | | |
| 3rd | | | 100 to 500 | 1 to 5 | |
| Over 3 | | | 500 to 25,000 | 6 to | X |
| Moderate | | | | | |
| 1st | | X | to 1,000 | | |
| 2nd | | | 500 to 1,000 | 3 to 10 | |
| 3rd | | | 1,000 to 2,000 | 10 to 20 | |
| Over 3 | | | 2,000 to 25,000 | 15 to | X |
| Serious | | | | | |
| 1st | | | 500 to 3,000 | 5 to 30 | |
| 2nd | | | 1,000 to 9,000 | 10 to 90 | |
| Over 2 | | | 9,000 to 25,000 | 15 to | X |
| Grave | | | | | |
| 1st | | | 1,000 to 25,000 | 10 to | X |
| Over 1 | | | | 15 to | X |

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and whether the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" and is incorporated by reference as part of this rule.

**R81-1-7. Disciplinary Hearings.**

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are be governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties. This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state. Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or

certificate of approval, the assessment of costs of action, an order prohibiting an employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state. Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate respondent may be represented by a member of the governing board of the corporation, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation, or by an attorney.

(j) Presiding Officers. The commission or the director may appoint presiding officers to receive evidence in disciplinary actions, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(i) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(ii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iii) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(iv) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence; or

(D) expedite the proceedings.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the compliance section of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an employee or agent of a licensee, permittee, or certificate of approval holder, or against a

manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Designation of Informal Adjudicative Proceedings.

(i) All adjudicative proceedings conducted under this rule are hereby designated as informal proceedings.

(ii) If the decision officer determines that the alleged violation warrants commencement of adjudicative proceedings, the matter shall be referred to a presiding officer who shall commence informal adjudication proceedings.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all respondents and other persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5, and that an informal hearing will be held where the respondent and department shall be permitted to testify, present evidence and comment on the issues;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) The date, time and place of the scheduled informal hearing;

(H) A statement that a respondent who fails to attend or participate in the hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(d) if revocation is sought in the complaint;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(c) The Informal Hearing.

(i) The respondent and department shall be notified in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Notice may appear in the notice of agency action, or may appear in a separate notice issued by the presiding officer. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of a tape recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be available at the department for use by the respondent, but the original transcript or tape recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii)(iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, at its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue a signed, written order pursuant to Section 32A-1-119(5) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action.

(H) A copy of the commission's order shall be promptly mailed to the respondent and the department.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within thirty days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

**R81-1-9. Liquor Dispensing Systems.**

A licensee may not install or use any system for the automated mixing or dispensing of liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses liquor in calibrated one ounce quantities; and

(b) has a meter which counts the number of pours served.

The margin of error of the system cannot exceed 1/16 of an ounce or two milliliter variation in pour size.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once the product is installed, the burden is on the licensee to maintain it to ensure that it continues to meet the manufacturer's specifications. Failure to maintain it may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the

licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a one ounce quantity of liquor. The calibration may not be changed or adjusted to pour any alternate quantity.

(b) Voluntary consent is given that representatives of the department, [~~Utah Division of Investigations~~]State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Liquor bottles in use with a remote liquor dispensing system must be in a locked storage area. Any other primary liquor not in service must remain unopened. There shall be no opened primary liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

(d) The dispensing system and liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must conform to the federal Bureau of Alcohol Tobacco and Firearms (BATF) ruling 77-32 which states in part that bar dispensing systems for use by retail liquor dealers "(1) must avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle, (2) must not dispense from or utilize containers other than original liquor bottles filled, stamped, and labeled in conformity with ATF regulations, (3) must prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed...." BATF ruling 77-32 (1977) is incorporated by reference.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) brands and container sizes of liquor dispensed through the dispensing system;

(ii) number of one ounce portions dispensed through the dispensing system by brand or sales price level;

(iii) number of one ounce portions sold by brand or sales price level; and

(iv) beginning and ending meter readings by brand or sales price level to correlate with [~~cost and sales totals~~]the number of drinks sold by brand or sales price level. These records must be made available for inspection and audit by the department or law enforcement.

(h) Each licensee shall file with the department a complete price list which includes the selling price, by brand, of each mixed drink dispensed through a metered dispensing system. The licensee or his agent shall not:

[~~(i) sell more than one mixed drink to a patron for a single price;~~

~~(ii)~~](i) establish a single price based on the required purchase of more than one mixed drink; or

[~~(iii)~~](ii) sell a mixed drink at a price that is reduced from the usual established price on the list the licensee has on file with the department.

This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains one ounce of primary liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.[~~ No lists which are wall posted on the premises of a restaurant licensee may be larger than 8 1/2 by 11 inches.~~]

A licensee or his employee shall not:

(i) sell or serve any brand of liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any liquor contained in any drink sold or offered for sale.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

**R81-1-10. Wine Dispensing.**

(1) Each licensee shall keep daily records for each dispensing outlet as follows:

(a) brands and container sizes of each wine dispensed by the glass;

(b) number of five ounce portions dispensed of each wine by brand and sales price level; and

(c) number of five ounce portions sold by brand and sales price level.

These records must be made available for inspection and audit by the department or law enforcement.

(2) The licensee or his agent shall not:

[~~(a) sell more than one five ounce glass of wine to a patron for a single price;~~

~~(b)~~](a) establish a single price based on the required purchase of more than one five ounce glass of wine; or

[~~(c)~~](b) sell a five ounce glass of wine at a price that is reduced from the usual established price.

**R81-1-11. Multiple-Licensed Facility Storage and Service.**

(1) For the purposes of this rule:

(a) "premises" as defined in Section [~~32A-1-105(36)~~]32A-1-105(35) shall include the location of any licensed restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section [~~32A-1-105(47)~~]32A-1-105(46) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9(4)(g) and R81-1-10(1) must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section [~~32A-4-106(26)(27)(32)~~]32A-4-106(27)(28)(33), or 32A-5-107(11)(12)(15)(16)(17), or [~~32A-10-206(13)~~]32A-10-206(14);

(e) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(f) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(g) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

(i) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

**R81-1-12. Alcohol Training and Education Seminar.**

[~~(1) The alcohol training and education seminar, as described in Section 62A-8-103.5, shall be completed by every employee of every new and renewing licensee under Title 32A who sells or furnishes alcoholic beverages to the public within the scope of his employment for consumption on the premises. Employees must complete the training within 30 days of commencing employment. Each licensee shall maintain current records on each employee indicating: (1) date of hire, and (2) date of completion of training.~~

~~(2) The seminar shall include the following subjects in the curriculum and training:~~

~~(a) alcohol as a drug and its effect on the body and behavior;~~

~~(b) recognizing the problem drinker;~~

~~(c) an overview of state alcohol laws;~~

~~(d) dealing with problem customers; and~~

~~(e) alternate means of transportation to get a customer safely home.~~

~~(3) Persons required to complete the seminar shall pay a fee to the seminar provider.~~

~~(4) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.~~](1) The alcohol training and education seminar, as described in Section 62A-8-103.5, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of traiing.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would consitute managing operations at the premises of a licensee.

**R81-1-13. Utah Government Records Access and Management Act.**

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section [~~63-2-203(3)~~]63-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

**R81-1-14. Americans With Disabilities Act Complaint Procedure.**

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.[ ~~However, any complaint alleging an act of discrimination occurring between January 26, 1992, and the effective date of this rule, may be filed within 60 days of the effective date of this rule.~~]

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

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

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**R81-1-15. Commission Declaratory Orders.**

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

**R81-1-16. Disqualification Based Upon Conviction of Crime.**

(1) The Alcoholic Beverage Control Act generally disqualifies any person, licensee, or, in the case of a partnership or a corporation, a partner, manager, officer, director, or shareholder with more than 20% of the issued and outstanding stock, from being an employee of the department, receiving a license, or being an employee of a licensee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; or

(c) any crime involving moral turpitude.

(2) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

**R81-1-17. Advertising.**

(1) Purpose.

(a) Recognizing the rulings of the United States Supreme Court in 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996), and Lorillard Tobacco Co. v. Reilly, 121 S. Ct. 2404 (2001), and the Tenth Circuit Court of Appeals in Utah Licensed Beverage Association v. Leavitt, 256 F3d 1061 (10th Cir. 2001), this rule interprets Utah statutes and rules relating to the advertising of alcoholic beverages in a manner to preserve their constitutionality[~~, and to identify such statutes and rules that the state will not enforce~~].

(b) No provision of this rule shall be construed as a concession that any current law or rule is unconstitutional. All statutes shall remain in full force and effect unless[~~expressly suspended by this rule. To the extent any statute or rule is inconsistent with this rule, this rule shall govern~~], consistent with the rulings cited above, enforcement of the statute would raise constitutional concerns. Also, the statutes should be interpreted in accordance with this rule.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Authority. This rule is enacted under the authority of Sections 63-46a-3, 32A-1-107, and 32A-12-401(2)(f) and (5).

(4) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(5) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(23), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable and enforceable.

(6) By this rule, the statutory provisions of Sections 32A-4-106(5)(d), 32A 4 106(21)(a) and (b), 32A-4-206(5)(c), 32A-6-105(7), 32A 7 106(2)(m), 32A 12 401(2)(a) through (e), (3) and (4), to the extent they restrict the advertising of liquor, as defined in 32A-1-105(23), and beer, as defined in 32A 1 105(4), by manufacturers, wholesalers, permittees, licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1, [~~are suspended~~]will not be enforced. Instead, all advertising of liquor and beer by these entities shall comply with the advertising requirements listed in Section (10) of this rule.

(7) Current statutes and rules restricting private club public solicitation or public advertising calculated to increase club membership are applicable and enforceable.

(8) All trade practice restrictions provided by Section 32A 12 603 regulating things of value that liquor and beer industry members, as defined in 32A 12 601, may provide to liquor and beer retailers are applicable and enforceable with the following [~~amendments~~]modifications in enforcement:

(a) any on premise beer retailer may be provided, receive and use things of value from beer industry members to the same extent authorized for any tavern licensee;

(b) a restaurant liquor licensee may be provided, receive and use things of value from beer industry members to the same extent authorized for any beer licensee or permittee; and

(c) product displays, inside signs, and consumer and retailer advertising specialties relating to liquor and beer products may be provided and displayed in compliance with the advertising guidelines of Section (10) to the extent authorized by this rule and federal law (see 27 CFR 6.84), to include being visible on and off the retailer's premise.

(9) Sections 32A 12 606(1), (2), and (3) relating to unlawful acts involving consumers are applicable and enforceable. Section 32A-12-606(4) which establishes guidelines for alcoholic beverage industry members or retailers to sponsor or underwrite athletic, theatrical, scholastic, artistic, or scientific events is applicable and

enforceable with the following [~~amendments~~]modifications in enforement:

(a) the guidelines for any alcoholic beverage advertising associated with the event are those listed in Section (10) of this rule;

(b) industry members or retailers are not precluded from sponsoring a theatrical, artistic, or scientific event that involves the display of drinking scenes; and

(c) industry members or retailers may not sponsor an event that takes place on the premises of a school, college, university, or other educational institution.

(10) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (4);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any promotional scheme such as "happy hour" or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages to the general public without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(11) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104.

**[~~R81-1-18. Pilot Wine Tasting Program.~~**

~~(1) Purpose. To implement and operate a pilot program by which local industry representatives may conduct retail licensee tastings of cork-finished wines at the department's administrative office complex.~~

~~(2) Authority. The authority for this rule is Section 32A-12-603(20) of the Alcoholic Beverage Control Act.~~

~~(3) Definitions.~~

~~(a) "Local industry representative" or "representative" means an individual, corporation, partnership, or limited liability company licensed by the commission under Section 32A-8-501 to represent cork-finished wine products of a manufacturer, supplier, or importer with the department, package agencies, licensees and permittees in this state, or any of the representative's employees.~~

~~(b) "Promotional tasting of wines" means conduct statutorily prohibited by Sections 32A-8-505(2), (6), and (7), 32A-12-201, 32A-12-208, 32A-12-603, and 32A-12-606.~~

~~(c) "Promotional tasting of wines" does not include:~~

~~(i) conduct authorized or excepted by Sections 32A-1-501 through 504, 32A-12-603(2), (3), (9), (10), and (20), 32A-12-606; or~~

~~(ii) conduct otherwise specifically allowed by law.~~

~~(d) "Retailer" means the holder of a private club or restaurant liquor license issued by the commission under Chapters 32A-4 and 32A-5, or any of the club's or restaurant's employees.~~

~~(e) "DABC" means the Department of Alcoholic Beverage Control.~~

~~(4) Check-out procedures.~~

~~(a) All cork-finished wines used in this program shall be checked out by a local industry representative from the department's club and restaurant store located at 1675 South 900 West, Salt Lake City, Utah.~~

~~(b) The wines shall be checked out during the store's regular business hours, excluding any recognized state or federal holiday, and the day preceding the holiday. The representative shall allow at least 24 hours from the time the order is placed until the wine is checked out~~

~~(c) At the time of check-out, each representative shall sign a purchase form which shall include the representative's DABC license number, a list of the wines checked out, and a statement that the wines will be used only for tasting sessions conducted under this~~

~~program. The form shall be in triplicate: one shall remain at the club and restaurant store; one shall accompany the wines when the representative checks them in at the tasting session; and one shall be the representative's receipt.~~

~~(d) Store personnel shall affix a bright colored label to each wine bottle which reads "Retailer Sample" to identify it for use in the pilot wine tasting program.~~

~~(e) Each representative shall pay full retail price (including markup and taxes) for each bottle of wine checked out.~~

~~(5) Special order and transfer procedures.~~

~~(a) Wines used in this program shall be products listed by the department or special ordered by the representative in accordance with department policy P96-03-04.~~

~~(b) No wines shall be transferred from other state liquor stores, but may be transferred from stock available in the central administrative warehouse, including special orders.~~

~~(6) Procedures for tasting sessions.~~

~~(a) All tasting sessions under this program shall be done in the department's administrative office building in rooms designated by the department.~~

~~(b) Sessions shall be held at least on a weekly basis on days and at times designated by the department.~~

~~(c) Representatives shall schedule a tasting session with the department at least one week in advance.~~

~~(d) Tasting sessions may be attended by representatives and their employees, manufacturers, suppliers, and importers; retailers and their employees; and supervisory staff of the department.~~

~~(e) The department may put a reasonable maximum limit on the total number of attendees.~~

~~(f) All persons attending the tasting other than department staff must sign an attendance form. Representatives and their employees, and retailers and their employees shall also enter their DABC license number on the form.~~

~~(g) The representative is responsible for transporting to the tasting session all wines checked out from the club and restaurant store. All wines checked out must be checked in to the department within seven (7) calendar days. The wines must be returned as a group and not piecemeal. The representative shall present a copy of the purchase form and pay the administrative per bottle fee set by the commission before participating in the session.~~

~~(h) Once the wines are brought to the session, they shall be checked in by the department, and may not leave the premises of the department's administrative office building except for disposition by the department. The department shall store wines for representatives for use at future tasting sessions, but not more than seven days from the date of purchase. The department shall maintain a record of each bottle returned.~~

~~(i) The department shall provide tables for the tasting sessions.~~

~~(j) The representatives shall provide their own buckets, glasses, openers, napkins, and food for the tasting sessions.~~

~~(k) Participants shall follow accepted protocol for wine tasting, and may not consume the wine.~~

~~(l) Any tasting session is subject to video taping at the discretion of the department. No audio taping shall be done.~~

~~(m) The representatives are responsible for dumping buckets and unused portions of wine, and cleaning up the tasting area at the conclusion of each tasting session.~~

~~(n) The department shall dispose of the wine as provided in Section 32A-12-603(3)(j) or -603(6).~~

~~(7) Administrative fee. In addition to the full retail price, the commission shall set an administrative fee for each bottle purchased under this program, and may periodically review the fee to ensure that it is sufficient to defray the department's actual, ordinary, and necessary costs directly incurred in administering this program.~~

~~(8) Penalties for Non-Compliance. Any representative or retail licensee who engages or participates in any promotional tasting of wines at any location in the state other than as allowed under this program may have their license suspended or revoked.~~

~~(9) Report to Legislature. The commission shall prepare a report of the program and file it with the Legislature before November 1, 1999.~~

~~(10) Duration of program. This program shall be in effect from July 1, 1998.~~

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**KEY: alcoholic beverages**
**[~~December 21, 2001~~]2002**
**Notice of Continuation December 26, 2001**
**32A-1-107**
**32A-1-119(5)(c)**
**32A-3-103(1)(a)**
**32A-4-103(1)(a)**
**32A-4-203(1)(a)**
**32A-5-103(3)(c)**
**32A-6-103(2)(a)**
**32A-7-103(2)(a)**
**32A-8-103(1)(a)**
**32A-9-103(1)(a)**
**32A-10-203(1)(a)**
**32A-11-103(1)(a)**

# Alcoholic Beverage Control, Administration
# R81-3-10
## Non-Consignment Inventory

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24453
FILED: 02/06/2002, 11:38

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it came to light that this section was under inclusive and should be amended. (DAR NOTE: The five-year review for R81-3 was published in the January 15, 2002, issue of the Utah State Bulletin under DAR No. 24319.)

SUMMARY OF THE RULE OR CHANGE: The amendment adds types 4 and 5 package agencies to type 1 as non-consignment package agencies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-10-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Types 4 and 5 package agencies always had non-consignment status. This section just did not reflect that.

❖ LOCAL GOVERNMENTS: None--Types 4 and 5 package agencies always had non-consignment status. This section just did not reflect that.
❖ OTHER PERSONS: None--Types 4 and 5 package agencies always had non-consignment status. This section just did not reflect that.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment does not change the section, it only corrects the section. Types 4 and 5 package agencies always had non-consignment status.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at abcmain.smackay@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

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**R81. Alcoholic Beverage Control, Administration.**
**R81-3. Package Agencies.**
**R81-3-10. Non-Consignment Inventory.**
Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.

**KEY: alcoholic beverages**
**[~~December 6, 2001~~]2002**
**Notice of Continuation December 18, 2001**
**32A-1-107**

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# Alcoholic Beverage Control, Administration
# R81-4A
# Restaurants

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24454
FILED: 02/06/2002, 15:04

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it came to light that this rule had several nonsubstantive changes as well as one substantive change that needed to be made. (DAR NOTE: The five-year review for R81-4A was published in the January 15, 2002, issue of the Utah State Bulletin under DAR No. 24320.)

SUMMARY OF THE RULE OR CHANGE: Subsections R81-4A-1(1) and R81-4A-7(1), and Section 81R-4A-14 are all amended to correct code references. Subsection R81-4A-9(1) is deleted because new advertising rules now allow liquor products to be stored where they are visible to restaurant patrons. The remainder of Section R81-4A-9 is renunmered to adjust for this change.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The visibility of liquor on the premises of a restaurant will not affect the state budget.
❖ LOCAL GOVERNMENTS: None--The visibility of liquor on the premises of a restaurant will not fiscally affect local governments.
❖ OTHER PERSONS: None--This rule does not require that restaurant licensees make any changes in their liquor storage areas, it only allows them the option to store liquor where it is visible to patrons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule does not require that restaurants make any changes in their liquor storage areas, it only allows them the option to store their liquor where it is visible to patrons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is conceivable that the display of a restaurant's liquor could increase its liquor sales somewhat and consequently increase its overall revenues.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at abcmain.smackay@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

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**R81. Alcoholic Beverage Control, Administration.**
**R81-4A. Restaurants.**
**R81-4A-1. Licensing.**

(1) Restaurant liquor licenses are issued to persons as defined in Section [~~32A-1-105(34)~~]32A-1-105(33). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-102(3) and 32A-4-103.

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of an on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections 32A-10-202, -203, and -205.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate on-premise beer retailer license must operate in accordance with 32A-10-206 and R81-10 during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

**R81-4A-2. Application.**

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32A-4-102, -103, and -105 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.

**R81-4A-3. Bonds.**

No part of any corporate or cash bond required by Section 32A-4-105, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

**R81-4A-4. Insurance.**

Public liability and dram shop insurance coverage required in Section 32A-4-102(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

**R81-4A-5. Restaurant Liquor Licensee Liquor Order Procedures.**

The following procedures shall be followed when restaurant liquor licensees order liquor from any state liquor store, package agency, or department satellite warehouse:

(1) A "Restaurant Liquor Order Form" must be completed for all restaurant liquor orders. The order form must be filled out by store/agency personnel and must include the restaurant liquor licensee name, department license number, and merchandise listed by code number.

(2) The licensee must allow at least one hour for the store/agency to fill the order. When the order is complete, the licensee will be notified by phone. The total cost of the store/agency total and the licensee total must agree.

(3) All orders must be picked up before 5:00 p.m. the same day the order is placed. The licensee's designee must check and sign for the order before it leaves the store, agency or warehouse.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come, first served basis.

**R81-4A-6. Restaurant Liquor Licensee Operating Hours.**

Allowable hours of liquor sales shall be in accordance with Section 32A-4-106 (8). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

**R81-4A-7. Sale and Purchase of Alcoholic Beverages.**

(1) Alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section [~~32A-4-106(32)~~]32A-4-106(33), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32A-4-106(30).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately suspended by the commission. Any suspension shall remain in effect until the licensee is able to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within three

months of the date the license was suspended, shall result in the revocation of the license.

(3) Liquor dispensing shall be in accordance with Section 32A-4-106; and Sections R81-1-9 (Liquor Dispensing Systems), R81-1-10 (Wine Dispensing), and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

However, an alcoholic beverage may contain the contents of a 50 ml bottle as a primary liquor if the commission has authorized the use of the 50 ml bottle for a specific liquor product.

**R81-4A-8. Liquor Storage.**

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

**R81-4A-9. Alcoholic Product Flavoring.**

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

[~~(1) The stock of alcoholic product flavoring shall be stored so as not to be visible to patrons of the restaurant.~~

~~(2)~~](1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

[~~(3)~~](2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

**R81-4A-10. Table Service.**

A wine service may be performed by the server at the patron's table for wine either purchased at the restaurant or carried in by a patron, provided the wine has an official state label affixed. The wine may be opened and poured by the server.

**R81-4A-11. Consumption at Patron's Table.**

(1) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department, but may not be located at the site where alcoholic beverages are dispensed to the server or stored.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

(3) All liquor consumed in a licensed restaurant must come from a container or package having an official state label affixed.

**R81-4A-12. Menus; Price Lists.**

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

**R81-4A-13. Identification Badge.**

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

**R81-4A-14. Brownbagging.**

When private social functions or privately hosted events, as defined in [~~32A-1-105(38)~~]32A-1-105(37), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

(1) When the entire restaurant is closed to the general public for the private function or event, or

(2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private function or event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

**KEY: alcoholic beverages**
**[~~December 6, 2001~~]2002**
**Notice of Continuation: December 18, 2001**
**32A-1-107**

# Alcoholic Beverage Control, Administration
# R81-5
## Private Clubs

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24458
FILED: 02/06/2002, 16:33

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it came to light that this rule needed both substantive and nonsubstantive changes. (DAR NOTE: The five-year review for R81-5 was published in the January 15, 2002, issue of the Utah State Bulletin under DAR No. 24324.)

SUMMARY OF THE RULE OR CHANGE: In Section R81-5-2: adds all statutory citations. In Subsections R81-5-5(1) and (2):

includes the word "beverages" when listing what a private club may advertise to its members. This proposed amendment would bring this rule in line with the new advertising section, R81-1-17. In Section R81-5-14: corrects an inaccurate code reference.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsection 32A-5-107(23)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Whether or not a private club advertises what beverages it sells will in no way impact the state budget.
❖ LOCAL GOVERNMENTS: None--Whether or not a private club advertises what beverages it sells will in no way fiscally impact local government.
❖ OTHER PERSONS: None--This rule does not require private clubs to advertise beverages. It only gives them the option to do so if they choose.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Private clubs are not required to change their advertising to include the advertisement of beverages. This rule just gives them the option to do so.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Private clubs are not required by this rule to advertise differently than before. However, it is conceivable that the advertising of beverages could increase the sales of liquor in a private club and consequently increase the club's overall revenues.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at abcmain.smackay@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

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**R81. Alcoholic Beverage Control, Administration.**
**R81-5. Private Clubs.**
**R81-5-1. Licensing.**

Private club liquor licenses are issued in the name of an officer or director of the club or association. Any contemplated action or transaction that may alter the organizational structure or ownership interest of the corporation to whom the license is issued must be submitted to the department for approval prior to consummation of any such action.

**R81-5-2. Application.**

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a private club license when the requirements of Sections 32A-5-102[~~and~~],-103, and -106 have been met, a completed application has been received by the department, and the private club premises have been inspected by the department.

**R81-5-3. Bonds.**

No part of any corporate or cash bond required by Section 32A-5-106 may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

**R81-5-4. Insurance.**

Public liability and dram shop insurance coverage required in Subsections 32A-5-102(1)(j) and (k) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

**R81-5-5. Advertising.**

(1) Pursuant to Subsection 32A-5-107(23), a private club shall not engage in any public solicitation or public advertising calculated to increase its membership. However, advertising shall be deemed not to include listings of facilities, which for informational purposes states that a facility is a private club. Additionally, the use of television, radio or print media may be utilized to provide information to members relative to food and beverage items, entertainment, and club events subject to the following guidelines:

(a) The television, radio or print media information must have a reference that the information is provided exclusively for members of that private club.

(b) The information may contain the address, hours of operation and telephone number of the private club.

(c) Information regarding happy hours, free food or beverages is prohibited.

(d) Any club that chooses to advertise in this manner must clearly identify the establishment as "a private club" and state that the information in the advertisement is "for our members", "for the members", or "for the members of , a private club". In print media, this club identification information must be no smaller than 10 point bold type. This subsection does not allow for the use of the words "guests" and/or "visitors".

(2) Club advertising on highway billboards is considered public solicitation or advertising calculated to increase club membership and is not allowed. Clubs may use signs at the site of the club to provide information to members relative to address, hours of operation, telephone number of the club, food and beverage items, entertainment, and club events. As used in this subsection, "site of the club" means any building or resort facility where the club is located.

**R81-5-6. Private Club Licensee Liquor Order Procedures.**

The following procedures shall be followed when private club licensees order liquor from any state liquor store, package agency, or department satellite warehouse:

(1) A "Private Club Order Form" must be completed for all private club orders. The order form must be filled out by store/agency personnel and must include the private club licensee name, department license number, and merchandise listed by code number.

(2) The licensee must allow at least one hour for the store/agency to fill the order. When the order is complete, the licensee will be notified by phone. The total cost of the store/agency total and the licensee total must agree.

(3) All orders for private clubs must be picked up before 5:00 p.m. the same day the order is placed. Licensee's designee must check and sign for the order before it leaves the store, agency or warehouse.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come, first served basis.

**R81-5-7. Private Club Licensee Operating Hours.**

Allowable hours of liquor sales shall be in accordance with Section 32A-5-107(24)(i). Liquor may be sold from 10 a.m. until 1 a.m. except on Sundays and holidays when liquor may be sold from noon to midnight. On a state or national election day, liquor may not be sold until after the polls are closed. On a local election day, liquor may be sold unless prohibited by local ordinance. Private club licensees may open their liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

**R81-5-8. Sale and Purchase of Alcoholic Beverages.**

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section 32A-5-107; and Sections R81-1-9 (Liquor Dispensing Systems), R81-1-10 (Wine Dispensing), and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

However, an alcoholic beverage may contain the contents of a 50 ml bottle as a primary liquor if the commission has authorized the use of the 50 ml bottle for a particular liquor product.

**R81-5-9. Liquor Storage.**

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the private club as approved by the department.

**R81-5-10. Alcoholic Product Flavoring.**

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the private club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

**R81-5-11. Price Lists.**

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer and shall be made a part of the house rules of the club, a copy of which shall be kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

**R81-5-12. Identification Badge.**

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

**R81-5-13. Visitor Cards and Records.**

(1) Pursuant to Section 32A-5-107(6), each visitor card issued shall include:

(a) the visitor's full name and signature;
(b) the name of the sponsoring member;
(c) the date the card was issued;
(d) the date the card expires;
(e) the club's name; and
(f) the serial number of the card.

(2) A record of visitor cards issued shall be maintained by the club and shall be available for inspection by the department. Such record shall be kept in a serial numbered order and shall contain:

(a) the serial number of the card;
(b) the name of the person to whom the card was issued;
(c) the name of the sponsoring member;
(d) the date the card was issued; and
(e) the date the card expires.

**R81-5-14. Brownbagging.**

When private social functions or privately hosted events, as defined in [~~32A-1-105(38)~~]32A-1-105(37), are held on the premises of a licensed private club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private function or event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private function or event, and members of the private group are restricted to

that area, and are not allowed to co-mingle with regular patrons of the club.

**R81-5-15. Membership Fees and Monthly Dues.**

Each private club shall establish in its by-laws initial membership fees and monthly membership dues in amounts determined by the club. However, monthly dues may not be less than one dollar per month.

**KEY: alcoholic beverages**
**[~~March 3, 1995~~]2002**
**Notice of Continuation: December 18, 2001**
**32A-1-107**
**32A-5-107(23)**

# Alcoholic Beverage Control, Administration
# R81-6-5
## Educational Wine Judging Seminars

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24461
FILED: 02/07/2002, 13:13

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it came to light this section needed to be amended to be consistent with the new advertising rule. (DAR NOTE: The five-year review for R81-6 was published in the January 15, 2002, issue of the Utah State Bulletin under DAR No. 24325.)

SUMMARY OF THE RULE OR CHANGE: The prior statutory reference was no longer applicable. This proposed amendment corrects that error.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This proposed amendment only corrects the statutory reference.
❖ LOCAL GOVERNMENTS: None--This proposed amendment only corrects the statutory reference.
❖ OTHER PERSONS: None--This proposed amendment only corrects the statutory reference.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This proposed amendment only corrects the statutory reference.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment will have no fiscal impact on businesses because it only corrects the statutory reference.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at abcmain.smackay@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

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**R81. Alcoholic Beverage Control, Administration.**
**R81-6. Special Use Permits.**
**R81-6-5. Educational Wine Judging Seminars.**

(1) Definition of Applicant. An applicant is any person or organization who is applying for an educational wine judging seminar permit, whose purpose is to inform and educate about the qualities and characteristics of wines.

(2) Application. The applicant must meet the requirements and qualifications for a scientific or educational special use permit found in Sections 32A-6-102, -103, and -401. In addition, the applicant must submit to the department a detailed proposal of the seminar which must include the qualifications of the judges, the number of wines being submitted by the wineries, and the location of the seminar. Additional information may be requested by the commission or department to properly evaluate the application.

(3) The applicant must post a cash or corporate surety bond in the penal sum of $1,000 payable to the department, which the permittee has procured and must maintain for as long as the permittee continues to operate as a special use permittee. The bond shall be in a form approved by the attorney general, conditioned upon the permittee's faithful compliance with the Act and the rules of the commission. If the surety bond is canceled due to the permittee's negligence, a $300 reinstatement fee may be assessed. No part of any cash bond so posted may be withdrawn during the period the permit is in effect. A bond filed by a permittee may be forfeited if the permit is finally revoked.

(4) The application for the educational wine judging seminar permit must be completed and submitted 90 days prior to the seminar date.

(5) Restrictions. Any person granted an educational wine judging seminar permit must, in addition to the restrictions in Section 32A-6-105, meet the following requirements and restrictions:

(a) The techniques used in judging the wines must meet internationally accepted techniques of sensory or laboratory evaluation, and the wines used may not be consumed.

(b) All unopened bottles must be returned to the department and any wine product residual in open bottles must be destroyed by the permittee.

(c) The educational wine judging seminar permit has an automatic expiration date of three days following the scheduled ending date of the seminar.

(d) The permittee must comply with [~~Section 32A-12-401 and R81-1-8~~]R81-1-17 regarding advertising of the seminar.

(6) Procedures for Handling the Seminar.

(a) The permittee must order all wines used in the seminar from the department. The department will order the wines from the wineries designating on the order that they are for a wine judging seminar. The permittee must make prior arrangements with the wineries to have the wines sent to the department at no charge and freight prepaid.

(b) The wines will be entered into the department accounting system at no cost and will be given a special department number, designating the wines as those to be used with an educational wine judging seminar permit and not to be consumed.

(c) The wines will be delivered to the permittee from the department. After the seminar, the permittee will return all unopened bottles of wine to the department and the permittee will destroy any other residual wine products left. The permittee will pay to the department a fee of two dollars for every bottle of wine used in the judging seminar.

(d) All wines returned to the department become the property of the state and will be destroyed under controlled conditions or will be given a new department number and sold in the state's retail outlets, which profits will be property of the state.

**KEY: alcoholic beverages**
**[~~1994~~]2002**
**Notice of Continuation December 18, 2001**
**32A-1-107**

▼ ▼

# Alcoholic Beverage Control, Administration
# R81-8
## Manufacturers (Distillery, Winery, Brewery)

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24465
FILED: 02/07/2002, 14:26

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it came to light that this rule needed both substantive and nonsubstantive changes. (DAR NOTE: The five-year review for R81-8 was published in the January 15, 2002, issue of the Utah State Bulletin under DAR No. 24327.)

SUMMARY OF THE RULE OR CHANGE: Section R81-8-1: adds other statutory references. In Section R81-8-2: adds a statutory reference and deletes material covered in that statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107; Subestion 32A-8-101(4); Sections 32A-8-102, 32A-8-103, 32A-8-105, and Subsection 32A-11-106(1)(b)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Statute addresses application requirements for manufacturers. This proposed amendment merely deletes redundant material covered in statute.
❖ LOCAL GOVERNMENTS: None--Statute addresses application requirements for manufacturers. This proposed amendment merely deletes redundant material covered in statute.
❖ OTHER PERSONS: None--Statute addresses application requirements for manufacturers. This proposed amendment merely deletes redundant material covered in statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment deletes information already covered by statute and in no way changes the applications requirements for manufacturers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since the application requirements for manufacturers is covered by statute, it is proposed that they be removed from this rule. This does not change the application requirements in any way.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at abcmain.smackay@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

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**R81. Alcoholic Beverage Control, Administration.**
**R81-8. Manufacturers (Distillery, Winery, Brewery).**
**R81-8-1. Application.**

An application for a manufacturer (distillery, winery, brewery) license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a manufacturer license when the requirements of Sections 32A-8-102,[~~and~~] -103, and -105

have been met, and a completed application has been received by the department.

**R81-8-2. Out of State Business.**

Brewers which are located outside the state which desire to sell and deliver beer containing an alcohol content of less than 4% alcohol by volume, to licensed beer wholesalers, must obtain a certificate of approval from the department pursuant to Sections 32A-8-101(4) and 32A-11-106(1)(b).[~~The following are required for issuance of a certificate of approval:~~

~~(1) A completed application for a certificate of approval, accompanied by a one hundred dollar non-refundable application fee;~~

~~(2) Valid authority from the Bureau of Alcohol, Tobacco and Firearms to brew beer;~~

~~(3) An annual license fee of fifty dollars. The licensing period is from January 1 through December 31 of each year.~~

~~All certificate of approval holders shall tender to the department a fifty dollar renewal fee prior to December 1st. Failure to timely remit the renewal fee shall result in the automatic forfeiture of the certificate of approval, effective on the date the existing certificate expires. The renewal application shall be in a form prescribed by the department.~~]

**KEY: alcoholic beverages**
**[~~1987~~]2002**
**Notice of Continuation: December 18, 2001**
**32A-1-107**

# Alcoholic Beverage Control, Administration
# R81-9
## Liquor Warehousing License

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24466
FILED: 02/07/2002, 15:47

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, it came to light that this rule required amendments to bring it up to date. (DAR NOTE: The five-year review for R81-9 was published in the January 15, 2002, issue of the Utah State Bulletin under DAR No. 24328.)

SUMMARY OF THE RULE OR CHANGE: Section R81-9-1: adds another statutory reference. In Section R81-9-5: removes the Citizens' Council from the list of those authorized to inspect liquor warehouses because the council no longer exists.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 32A-1-7, 32A-9-102, 32A-9-103, and 32A-9-105

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The Citizens' Council no longer exists, therefore, removing a reference to it will in no way affect the state's budget; nor does adding an additional statutory reference affect the budget.
❖ LOCAL GOVERNMENTS: None--The Citizens' Council no longer exists. Removing a reference to it or adding an additional statutory reference to the rule will not affect local governments.
❖ OTHER PERSONS: None--The Citizens' Council no longer exists. Removing a reference to it or adding an additional statutory reference to the rule will have no effect on any organizations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--No part of this proposed amendment affect the cost of compliance for liquor warehouse licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Neither of these amendments will fiscally impact businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at abcmain.smackay@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Kenneth F. Wynn, Director

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**R81. Alcoholic Beverage Control, Administration.**
**R81-9. Liquor Warehousing License.**
**R81-9-1. Application.**

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a liquor warehousing license when the requirements of Sections 32A-9-102[~~and~~], 32A-9-103 and -105 have been met, a completed application has been received by the department, and the warehouse premises have been inspected by the department.

**R81-9-2. Transportation.**

Dual licensees, those who have both a liquor warehousing license and a beer wholesaling license, pursuant to Chapters 9 and 11 of the Act, may transport liquor, wine, and heavy beer to the department and to federal military installations within Utah.

**R81-9-3. Records.**

Each licensee shall keep available and open for audit at all times during regular business hours, complete and accurate records of shipments to or from their warehouse facility. Records shall be kept for a minimum of three years.

**R81-9-4. Audits.**

The liquor warehouse licensee shall allow the department, through its authorized representatives, to audit all records of their liquor warehouse license at times the department considers advisable.

**R81-9-5. Inspection.**

A liquor warehouse licensee shall permit any authorized representative of the commission, department[~~, citizens' council~~], or any law enforcement officer unrestricted right to enter the liquor warehouse facility to inspect the premises.

**KEY: alcoholic beverages**
**[~~1991~~]2002**
**Notice of Continuation: December 18, 2001**
**32A-1-107**

# Commerce, Occupational and Professional Licensing

# R156-54-302b

## Examination Requirements - Radiology Practical Technician

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24472
FILED: 02/12/2002, 08:20

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: When this rule was last amended in December 2001, the American Registry of Radiological Technologists (ARRT) had assured the Division they were developing a national exam for bone densitometry. In early 2002, ARRT indicated that they were not writing an osteoporotic exam. Thus, the rule needs to be amended to recognize the Utah Limited Scope Osteoporotic Exam so that radiology practical technicians who operate bone density machines have a mechanism for licensure.

SUMMARY OF THE RULE OR CHANGE: In Section R156-54-302b: deleted bone densitometry from ARRT Limited Scope of Practice in Radiography Examination choices. Added that an applicant for licensure may substitute passing the Utah Limited Scope Osteoporotic Exam, covering bone densitometry, with a minimum score of 75%.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur costs of approximately $50 to reprint this rule once these proposed changes have been made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed rule does not apply to local governments

❖ OTHER PERSONS: Current licensed radiology practical technicians who choose to take the Utah Limited Scope Osteoporotic Examination will pay an examination fee of $110. The Division is unable to determine how many radiology practical technicians will take this examination.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Current licensed radiology practical technicians who choose to take the Utah Limited Scope Osteoporotic Examination will pay an examination fee of $110. The Division is unable to determine how many radiology practical technicians will take this examination.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule has substituted the Utah Limited Scope Osteoporotic Exam for the ARRT Bone Densitometry Exam. The fiscal impact of the substituted exam is unclear. We cannot do a cost comparison, because the ARRT bone densitometry exam will not be developed and thus a fee for that exam will not be determined. Also, the limited scope osteoporotic exam is optional, and it is difficult to know how many of the 1054 currently active radiology practical technicians will take the exam. Clinics and hospitals that normally pay the exam costs for their radiology practical technicians could incur the additional expense of the limited scope osteoporotic exam. The exam is optional, however, and it would be difficult to estimate the amount of business impact. Clinics and hospitals might pass the expense of the limited scope osteoporotic exam to their patients, some of whom might in turn pass the expense to their insurers. Again, it is difficult to estimate the amount of the business impact to insurance companies. Ted Boyer, 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:
Lynn Bernhard at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at lbernhar@br.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: J. Craig Jackson, Director

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**R156. Commerce, Occupational and Professional Licensing.**
**R156-54. Radiology Technologist and Radiology Practical Technician Licensing Act Rules.**
**R156-54-302b. Examination Requirements - Radiology Practical Technician.**

In accordance with Subsection 58-54-5(3), the examination requirement for licensure as a radiology practical technician requires passing:

(1) the ARRT Limited Scope of Practice in Radiography Examination for the following:

(a) core; and

(b) one or more of the following sections:

(i) chest;

(ii) extremities;

(iii) skull/sinuses;

(iv) spine; and

(v) podiatric[~~; and~~

~~(vi) bone densitometry~~].

(2) In place of passing one or more of the sections required in Subparagraph (1)(b), an applicant for licensure may substitute passing the Utah Limited Scope Osteoporotic Exam, covering bone densitometry, with a minimum score of 75%.

**KEY: licensing, radiology technologist, radiology practical technician**
**[~~December 18, 2001~~]2002**
**Notice of Continuation May 12, 1997**
**58-54-1**
**58-1-106(1)**
**58-1-202(1)**

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# Commerce, Occupational and Professional Licensing

# R156-75

## Genetic Counselors Licensing Act Rules

**NOTICE OF PROPOSED RULE**
(New Rule)
DAR FILE NO.: 24459
FILED: 02/07/2002, 10:55

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2001 legislative session, S.B. 59 was enacted which created Title 58, Chapter 75, and required the Division to license genetic counselors. This rule is being proposed to clarify the requirements contained in Title 58, Chapter 75. (DAR NOTE: S.B. 59 is found at 2001 Utah Laws 100 and is effective as of 04/30/2001.)

SUMMARY OF THE RULE OR CHANGE: The following new sections are being created: title, definitions, authority-purpose, organization-relationship to Rule R156-1, temporary license, renewal cycle-procedures and continuing education. The following definitions are added in Section R156-75-102: "active candidate status", "general supervision" and qualified continuing education". Section R156-75-302b regarding temporary licensure clarifies when a temporary license may and may not be issued, length of time the temporary license may be issued, and type of supervision a temporary license holder must practice under. Section R156-75-304 regarding continuing education clarifies that 30 hours of continuing education must be completed every two years and the continuing education must be approved for recertification purposes by the American Board of Genetic Counseling. The section also provides it is the licensee's responsibility to maintain records with regards to continuing education. The section also provides that a licensee may be excused from meeting the continuing education requirements for up to two years if he is able to document circumstances which prevent him from meeting the continuing professional education requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1), 58-1-202(1), 58-75-302(2), and 58-75-303(2)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs, less than $30, to print the rule once it is made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: This proposed rule does not affect local government.

❖ OTHER PERSONS: The costs identified below are NOT imposed by this rule but rather the statute (Title 58, Chapter 75) that was passed by the 2001 Legislature. The Division is identifying known costs to an applicant for licensure as a genetic counselor and to a genetic counselor licensee for renewal and continuing education. An applicant applying for initial licensure will pay a $150 application fee. An applicant for licensure who also applies for a temporary license will pay a $50 temporary license fee. Individuals licensed as a genetic counselor will pay $135 renewal fee every two years. The Division estimates it could cost between approximately $300 - $500 every two years for a licensed genetic counselor to obtain the 30 continuing education hours. The Division anticipates there will be only about 14 licensed genetic counselors in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The costs identified below are NOT imposed by this rule but rather the statute (Title 58, Chapter 75) that was passed by the 2001 Legislature. The Division is identifying known costs to an applicant for licensure as a genetic counselor and to a genetic counselor licensee for renewal and continuing education. An applicant applying for initial licensure will pay a $150 application fee. An applicant for licensure who also applies for a temporary license will pay a $50 temporary license fee. Individuals licensed as a genetic counselor will pay $135 renewal fee every two years. The Division estimates it could cost between approximately $300 - $500 every two years for a licensed genetic counselor to obtain the 30 continuing

education hours. The Division anticipates there will be only about 14 licensed genetic counselors in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is established in accordance with Utah Code Annotated, Section 58-75-101, et seq., to supplement the Genetic Counselors Licensing Act ("Act"). There appears to be no fiscal impact to businesses as a result of this rule. The rule's purpose is to assist the Division of Occupational and Professional Licensing in administering the Act and they do not place additional requirements beyond those previously identified in the Act. Ted Boyer, 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:
Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@br.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/21/2002 at 8:00 AM, 160 East 300 South, Room 4B (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: J. Craig Jackson, Director

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**R156. Commerce, Occupational and Professional Licensing.**
**R156-75. Genetic Counselors Licensing Act Rules.**
**R156-75-101. Title**

These rules are known as the "Genetic Counselors Licensing Act Rules."

**R156-75-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 75, as defined or used in these rules:

(1) "Active candidate status", as used in Subsection $156-75-302(1)(e) describes an individual who has been approved by the American Board of Genetic Counseling (ABGC) to sit for the certification exam in genetic counseling.

(2) "General supervision", as used in Section R156-75-302, means the supervisor has the overall responsibility to assess the work of the supervisee including at least twice monthly face to face meetings with chart review and weekly case review. An annual supervision contract signed by the supervisor and supervisee must be on file with both parties.

(3) "Qualified continuing education", as used in these rules, means continuing education that meets the standards set forth in Section R156-75-304.

**R156-75-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 75.

**R156-75-104. Organization - Relationship to Rule R156-1.**

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

**R156-75-302b. Qualifications for Licensure - Temporary License.**

In accordance with Subsection 58-75-302(2), the requirements for temporary licensure are established as follows:

(1) An applicant shall meet all the qualifications for licensure as established in Subsection 58-75-302(1) with the exception of Subsection 58-75-302(1)(e), and have active candidate status conferred by the American Board of Genetic Counseling.

(2) An individual practicing under the authority of a temporary license must practice under the general supervision of a licensed genetic counselor or a licensed physician certified in clinical genetics by the American Board of Medical Genetics.

(3) A temporary license may be issued for a period up to 42 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination. If an applicant fails the first sitting of the American Board of Genetic Counseling certification exam, he may reapply for a second temporary license.

(4) A temporary license will not be issued if the applicant has failed the American Board of Genetic Counseling certification examination more than once.

(5) A temporary license shall expire upon the earliest of one of the following:

(a) issuance of full licensure;

(b) 30 days after failing the certification exam; or

(c) the date printed on the temporary license.

**R156-75-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 75 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

**R156-75-304. Continuing Education.**

(1) In accordance with Subsections 58-1-203(7), 58-1-308(3)(b) and Section 58-75-303, there is created a continuing education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 75.

(2) Continuing education shall consist of 30 hours (3 CEU's) in each preceding two year licensing cycle and must be approved for recertification purposes by the American Board of Genetic Counseling.

(3) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records

pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(4) A licensee who documents he is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may apply to be excused from the requirement for a period of up to two years. It is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

**KEY: licensing, occupational licensing, genetic counselors**
**2002**
**58-1-106(1)**
**58-1-202(1)**
**58-75-302(2)**
**58-75-303(2)**

# Environmental Quality, Air Quality
# R307-415-3
## Definitions

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24491
FILED: 02/14/2002, 13:35

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To add changes made in the federal definition of "Major Source" on November 27, 2001, at 66 FR 59161.

SUMMARY OF THE RULE OR CHANGE: The change means that sources of air pollution emissions that are subject to standards promulgated after August 7, 1980, under Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 or 7412) do not need to count fugitive emissions in determining whether they are Major Sources under Title V of the Clean Air Act and 40 CFR Part 70. On the other hand, if the source must count fugitive emissions, it must count fugitive emissions of all regulated pollutants, not just those regulated under the specific part of Section 111 or 112 that the source is subject to.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-109.1 and 19-2-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state budget is not affected, as all Part 70 sources are regulated with the fees paid by the sources.
❖ LOCAL GOVERNMENTS: To our best knowledge, no sources owned by local governments are affected by this change. Local governments may be affected if they operate sources of air pollution emissions that are subject to Title V and Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 or 7412). If the change in the definition means that the source is now a major source under 40 CFR Part 70, then the source will be required to submit an application for a Part 70 permit and will be subject to the annual fee, currently $35.05 per ton of regulated emissions. The cost of preparing the application varies depending upon the size and complexity of the source but varies from approximately $5,000 to $30,000.
❖ OTHER PERSONS: To our knowledge, only one source is affected by this rule change. That source will not be required to submit a permit application, for a savings of $5,000 to $30,000. Also, the source will not have to pay the annual emissions fee, currently $35.05/ton. Persons may be affected if they operate sources of air pollution emissions that are subject to Title V and Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 or 7412). If the change in the definition means that the source is now a major source under 40 CFR Part 70, then the source will be required to submit an application for a Part 70 permit and will be subject to the annual fee, currently $35.05 per ton of regulated emissions. The cost of preparing the application varies depending upon the size and complexity of the source but varies from approximately $5,000 to $30,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To our knowledge, only one source is affected by this rule change. That source will not be required to submit a permit application, for a savings of $5,000 to $30,000. Also, the source will not have to pay $35.05/ton of emissions annually. Persons may be affected if they operate sources of air pollution emissions that are subject to Title V and Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 or 7412). If the change in the definition means that the source is now a major source under 40 CFR Part 70, then the source will be required to submit an application for a Part 70 permit and will be subject to the annual fee, currently $35.05 per ton of regulated emissions. The cost of preparing the application varies depending upon the size and complexity of the source but varies from approximately $5,000 to $30,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will save at least one source from the expense of preparing a permit application and paying an annual fee under the Title V Operating Permits program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at jmiller@deq.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/22/2002 at 10:00 AM, DEQ Building, Room 201, 168 N 1950 W, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2002

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

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**R307. Environmental Quality, Air Quality.**
**R307-415. Permits: Operating Permit Requirements.**
**R307-415-3. Definitions.**

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants, furnace process;

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) [~~All other stationary source categories regulated by a standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources, or Section 112 of the Act, Hazardous Air Pollutants, but only with respect to those air pollutants that have been regulated for that category.~~]Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

**KEY: air pollution, environmental protection, operating permit[*], emission fee[*]**
**[~~December 7, 2000~~]2002**
**Notice of Continuation March 1, 1999**
**19-2-109.1**
**19-2-104**

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# Environmental Quality, Air Quality
# R307-415-9
## Fees for Operating Permits

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24492
FILED: 02/14/2002, 13:35

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify the base year for calculating emissions fees, and to allow sources to trade their fee credits.

SUMMARY OF THE RULE OR CHANGE: In Subsection R307-415-9(3)(d): clarifies that a source not billed during its first operating year shall be billed in the next cycle based on the emissions that would have been used had the source been billed in the first operating year. In Subsection R307-415-9(3)(e): adds a new subsection (iv) to allow a source that is no longer operating or is no longer subject to Title V to transfer any emission fee credit to another source subject to Title V. The Air Quality Board specifically seeks comment on whether the credit can be used in the current year or only in subsequent years, and on whether the credit could be refunded instead of being transferred to another source for use only in the Title V program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-109.1 and 19-2-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no effect on the state budget, as the Title V program is operated entirely with fees from sources.
❖ LOCAL GOVERNMENTS: A local government may be affected if it operates a source of air pollution emissions that is subject to Title V of the Clean Air Act.
❖ OTHER PERSONS: Regarding the clarification of which emissions will be used to calculate the emissions fee if a source has not been billed, there is no way to know whether an affected source would pay more or less. Allowing a source to transfer credits for overpaid fees to another source will benefit the source that has overpaid, but there is no way to know how much the source will save or how many sources may be able to use this benefit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Regarding the clarification of which emissions will be used to calculate the emissions fee if a source has not been billed, there is no way to know whether an affected source would pay more or less. Allowing a source to transfer credits for overpaid fees to another source will benefit the source that has overpaid, but there is no way to know how much the source will save or how many sources may be able to use this benefit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The first change clarifies how emission fees will be calculated, and that provides more certainty for sources. The second change allows a source no longer in business or no longer subject to the Title V program to benefit from an otherwise unusable credit.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at jmiller@deq.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/22/2002 at 10:00 AM, DEQ Building, Room 201, 168 N 1950 W, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2002

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

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**R307. Environmental Quality, Air Quality.**
**R307-415. Permits: Operating Permit Requirements.**
**R307-415-9. Fees for Operating Permits.**

(1) Definitions. The following definitions apply only to R307-415-9.

(a) "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(b) "Chargeable pollutant" means any "regulated air pollutant" except the following:

(i) carbon monoxide;

(ii) any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(iii) any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, it shall be billed in the next billing cycle, and the emission fee shall be calculated using the emissions that would have been used had the source been billed at the appropriate time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source ceases operation, is redesignated as a non-Part 70 source, or is otherwise exempted from the emission fee requirements, the emission fee shall be prorated to the date that the source ceased operation or was reclassified. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be credited to the source's account, but will not be refunded. When that Part 70 source resumes operation or again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source resumed operation or was reclassified. The fee shall be based on the emission inventory during the last full year of operation for that Part 70 source minus any credit in the source's account.

(i) The emission fee for a Part 70 source that has resumed operation shall continue to be based on actual emissions reported for the last full calendar year of operation before the shutdown until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee or credit shall be calculated using allowable emissions.

(iii) Temporary shut downs of less than three months, or other normal shut downs due to seasonal work or regularly scheduled maintenance shall not qualify for an emission fee credit.

(iv) A Part 70 source that is no longer operating, is redesignated as a non-Part 70 source, or is otherwise exempted from the emission fee requirements, and has a credit for emission fees, may transfer the credit to another Part 70 source for use. Credit is established by an acknowledgment from the executive secretary identifying the amount of the credit. Transfer of credit is accomplished by submitting to the executive secretary documentation from the holder and user of the credit verifying the transfer.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

**KEY: air pollution, environmental protection, operating permit[*], emission fee[*]**
**[~~December 7, 2000~~]2002**
**Notice of Continuation March 1, 1999**
**19-2-109.1**
**19-2-104**

# Health, Children's Health Insurance Program
# R382-10
# Eligibility

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24488
FILED: 02/13/2002, 15:45

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking establishes the process for opening enrollment in the Children's Health Insurance Program (CHIP), when sufficient funding is available. The amendment allows CHIP to enroll as many children as its budget will allow.

SUMMARY OF THE RULE OR CHANGE: Section R382-10-18 is amended to remove subsections that describe enrollment procedures for children who become members of households who presently have other children enrolled. Also the words "recertification" and "recertify" have been replaced throughout with "renewal" and "renew" respectively. Section R382-10-19 is a new section describing the open enrollment period process.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 40; and Section 26-40-103

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The cap on enrollment, along with other changes, will keep CHIP within the $5,500,000 general fund appropriation. This rule establishes the process for open enrollment to allow CHIP to enroll as many children as its budget will allow when sufficient funds are available within existing appropriations.
❖ LOCAL GOVERNMENTS: This provision does not affect local government because CHIP is a state program.
❖ OTHER PERSONS: Potential enrollees and providers will be positively impacted when budget allows new applications to be accepted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: New enrollees and providers will be positively impacted, when budget allows new applications to be accepted. The only possible cost for the public is to monitor when applications will be accepted and to timely file an application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Health projected that 21,000 children would be eligible to qualify for CHIP. Enrollment as of December 2001 was in excess of 26,000. A budget shortfall for FY 2002 was projected. This rule will set in place the process for opening enrollment when budget allows. The impact on business will be favorable. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
CHILDREN'S HEALTH INSURANCE PROGRAM
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:
Gayleen Henderson at the above address, by phone at 801-538-6135, by FAX at 801-538-6952, or by Internet E-mail at ghenders@doh.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/10/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/11/2002

AUTHORIZED BY: Rod Betit, Executive Director

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**R382. Health, Children's Health Insurance Program.**
**R382-10. Eligibility.**
**R382-10-1. Authority.**

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program. It is authorized by Title 26, Chapter 40.

**R382-10-2. Definitions.**

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which are incorporated by reference in this rule.

(2) The following additional definitions also apply:

(a) "Applicant," means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(b) "Best estimate" means the Department's determination of a household's income for the upcoming [~~certification~~]eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Department" means the Utah State Department of Health.

(e) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(f) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(g) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(h) "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(i) "[~~Recertification~~]Renewal month" means the last month of the eligibility period for an enrollee.

(j) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

**R382-10-3. Actions on Behalf of a Minor.**

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The executive director of the Department or his designee may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

**R382-10-4. Applicant and Enrollee Rights and Responsibilities.**

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply at any time for Children's Health Insurance Program benefits on behalf of a child. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide the Department with verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

**R382-10-5. Verification and Information Exchange.**

(1) The applicant and enrollee upon [~~recertification~~]renewal must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960, 1997 edition.

**R382-10-6. Citizenship and Alienage.**

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

**R382-10-7. Utah Residence.**

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

**R382-10-8. Residents of Institutions.**

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

**R382-10-9. Social Security Numbers.**

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a

SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

**R382-10-10. Creditable Health Coverage.**

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who has access to health insurance coverage through an employer where the cost to enroll the child in the plan is less than 5% of the household's gross annual income, is not eligible for CHIP assistance. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(4) The Department shall deny eligibility if the applicant, a custodial parent, or an absent parent with a legal obligation to provide health insurance coverage has voluntarily terminated health insurance coverage in the three months prior to the application date for enrollment under CHIP. An applicant or applicant's parent(s) who is involuntarily terminated from an employer's plan is eligible for CHIP without a three month waiting period.

(5) If an absent parent is court-ordered to provide health insurance for a child and could enroll the child in the parent's employer's health insurance plan, the child is not eligible for CHIP enrollment.

(6) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(7) An applicant must report at application and [~~certification review~~]renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(8) An enrollee must report when any enrollee in the household begins to receive coverage under, or begins to have access to, any type of group health plan, other health insurance coverage, or a state employee's health benefits plan.

(9) The Department shall deny an application or [~~recertification~~]renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or [~~recertify~~]renew in the program.

**R382-10-11. Household Composition.**

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

(4) If an individual is caring for a child of his or her former spouse, in a case in which a divorce has been finalized, the child may be included in the household if the child resides in the home.

**R382-10-12. Age Requirement.**

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

**R382-10-13. Income Provisions.**

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by any household member is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count income that is defined in 20 CFR 416(K) Appendix, 1997 edition, which is adopted and incorporated by reference.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

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

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

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

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that

these payments will continue to be received during the [~~certification~~]eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Earned income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

**R382-10-14. Budgeting.**

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of a child, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming [~~certification~~]eligibility period at the time of application and at each [~~recertification~~]renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming [~~certification~~]eligibility period. The Department shall prorate income that is received less often than monthly over the [~~certification~~]eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the [~~certification~~]eligibility period, or an annual amount that is prorated over the [~~certification~~]eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department shall request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department shall request expense information and deduct the expenses from the gross income. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

**R382-10-15. Assets.**

An asset test is not required for CHIP eligibility.

**R382-10-16. Application and [~~Recertification~~]Renewal.**

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. [~~Recertification~~]Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment during an open enrollment period.[~~at any local office. Individuals may request that an application form be mailed to them.~~]

(4) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(5) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

**R382-10-17. Eligibility Decisions.**

(1) The Department must determine eligibility for CHIP within 30 days of the date of application. If a decision can not be made in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and [~~recertification~~]renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid is not eligible for Medicaid until the spend-down has been met.

**R382-10-18. Effective Date of Enrollment and [~~Recertification~~]Renewal.**

(1) The effective date of CHIP enrollment is the date a completed and signed application is received by the Department. The Department [~~will~~]may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department[~~, if a child has had an emergency that delayed the completion of the application~~]. The Department shall not pay for any services received before the effective enrollment date.[

~~(2) A household that the Department has determined to be eligible for CHIP, and has a child enrolled in CHIP, may enroll another eligible child. The effective date of enrollment will be the date of report, except as otherwise provided in R382-10-18(1). The effective date for enrollment in CHIP for a child meeting one of the criteria below will be the date of the event listed below, if the household reports the event to the Department within 30 days of the event. The events are:~~

~~(a) when a new baby is born to a household member;~~

~~(b) when a child is adopted or placed for the purpose of adoption by a household member;~~

~~(c) when a parent of an enrolled child, or an enrolled child, marries, and a dependent child meeting CHIP eligibility criteria is added to the household as a result;~~

~~(d) when a child who was previously ineligible for CHIP because he had health insurance coverage, or had access to an employer's health insurance plan, loses coverage or access involuntarily.~~

~~(3) When the report is made more than 30 days after the specified event, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).~~]

([~~4~~]2) The effective date of enrollment for a [~~recertification~~]renewal is the first day of the month after the [~~recertification~~]renewal month, if the [~~recertification~~]renewal is completed by the end of the [~~recertification~~]renewal month and the child continues to be eligible.

([~~5~~]3) If [~~both~~] the [~~recertification~~]renewal [~~form and the required verifications are not received~~]is not completed by the end of the [~~recertification~~]renewal month, the case will be closed unless the enrollee has good cause for not completing the [~~recertification~~]renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

([~~6~~]4) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the [~~recertification~~]renewal process.

**R382-10-19. Open Enrollment Period.**

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(a) The Department shall notify the public of the open enrollment period 10 days in advance through a newspaper of general circulation.

(b) During an open enrollment period, the Department may accept applications through the mail or online at a central location. The Department sorts applications received according to the date of the postmark or the date of electronic transmission. If the applications received on a day exceed the number of openings available, the Department shall randomize all applications for that day and select the number needed to fill the openings.

(c) The Department will not accept applications postmarked or transmitted prior to the open enrollment date.

**R382-10-[~~19~~]20. Enrollment Period.**

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered by or have access to coverage under a group health plan or other health insurance coverage, or enters a public institution. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

**R382-10-[~~20~~]21. Termination and Notice.**

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at [~~recertification~~]renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) The action to be taken;

(b) The reason for the action;

(c) The regulations or policy that support the action;

(d) The applicant's or enrollee's right to a hearing;

(e) How an applicant or enrollee may request a hearing; and

(f) The applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return; or

(c) the child has entered a public institution, in which case eligibility may cease immediately and without prior notice.

**R382-10-[~~21~~]22. Case Closure or Withdrawal.**

The department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

**KEY: children's health benefits[~~*~~]**
**[~~April 4, 2001~~]2002**
**26-1-5**
**26-40**

# Health, Health Care Financing, Coverage and Reimbursement Policy

# R414-63

## Medicaid Policy for Pharmacy Reimbursement

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24495
FILED: 02/15/2002, 14:06

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule creates cost-savings in the Medicaid budget to accommodate a shortfall in state revenues. The savings will be the result of better utilization of the prescription benefit by Medicaid recipients. Recipients will have an incentive to minimize prescriptions where possible. The rule excludes certain types of drugs and provides for a medical exclusion.

SUMMARY OF THE RULE OR CHANGE: A limit of seven non-exempt prescriptions per calendar month per Medicaid client is established. Pregnant women and children are not subject to the limit as required by federal law. Various drugs are excluded from the limit: HIV drugs; oncology drugs; insulin and oral hypoglycemics; calcium channel blockers; cardiac medication; isotropic drugs; loop diuretics, etc. Anytime the computer recognizes that a recipient has a prescription for an eigth non-exempt drug, an assessment by the Department will be triggered and the prescription will be authorized and paid for until the assessment is completed. Any exceptions above the seven-prescription limit are to be filled with the least costly drug available. In the event of a disagreement that cannot be resolved, the Department will defer to the judgment of the prescribing physician. Eleven other states have had a similar limit for several years. Utilization of the pharmacy benefit has been reduced in those states.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This provision will save an estimated $800,000 annually in the General Fund. Up to $1,866,667 in federal match to the state budget will be lost.

❖ LOCAL GOVERNMENTS: There is no impact because no local government entities will be responsible for administering this provision.

❖ OTHER PERSONS: Medicaid clients who do not qualify for a medical exception may still choose to pay for non-excluded prescriptions beyond the seven-prescription limit. There is no way of knowing how many will so choose or how much they will pay. Impact on pharmacies should be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In most cases, Medicaid recipients will have an incentive to better manage their prescription utilization. Review of prescription patterns by Medicaid staff suggest that the majority of Medicaid recipients who are not likely to qualify for a medical exemption and currently receive more than seven non-exempted prescriptions per month can reduce those prescriptions without an adverse impact on their health care. Medicaid does not believe that a significant number of Medicaid recipients will be forced to pay for prescriptions and therefore the cost to Medicaid recipients should be minimal, while the savings to the Medicaid program will be significant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Budget shortfalls necessitate significant reductions in Medicaid expenditures. The cost of the pharmacy benefit has been growing exponentially. This rule should allow Medicaid to curb inappropriate over-utilization of this benefit by some recipients, without a significant adverse impact on the majority of Medicaid recipients. Through the exemptions for certain drugs and unusual medical conditions, special circumstances can be addressed. Fiscal impact on business appears to be minimal.
Rod L. Betit

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Michael J. Deily or Ross Martin at the above address, by phone at 801-538-6406 or 801-538-6592, by FAX at 801-538-6478 or 801-538-6099, or by Internet E-mail at mdeily@doh.state.ut.us or lrmartin@doh.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-63. Medicaid Policy for Pharmacy Reimbursement.**
**R414-63-1. Introduction and Authority.**

(1) The Medicaid Policy for reimbursement of dispensing fees for pharmacy providers was achieved through negotiations with representatives of the pharmacy industry.

(2) This rule is authorized under Chapter 26-18.

**R414-63-2. Pharmacy Reimbursement.**

(1) For each prescription filled for a Medicaid recipient the Department may reimburse the pharmacy provider for up to seven (7) non-exempt prescriptions in any calendar month. The limit on prescriptions will not take effect until the assessment required in section (4) of this rule is completed. A single prescription that is filled multiple times in the month is one prescription. The pharmacy provider shall [~~receive~~]be reimbursed:

[~~(1)~~](a) the average wholesale price for the medication minus 12%; and

[~~(2)~~](b) a dispensing fee in the amount of $3.90 for urban providers and $4.40 for rural providers.

(2) The limitation on the number of prescriptions does not apply to pregnant women or children under age 21.

(3) The following drug classes are exempt from the seven prescription limit in (1):

(a) A4A, hypotensive - vasodilator, example: minoxidil (Loniten);

(b) A4B, hypotensive - sympatholytic, example: guanethidine (Ismelin);

(c) A4C, hypotensives - ganglionic blockers, example: trimethaphan (Arfonad);

(d) A4D, hypotensives - ACE blocking type, example: captopril (Capoten);

(e) A4E, hypotensives - veratrum alkaloids, example: cryptenamine;

(f) A4F, hypotensives - angiotensin receptor antagonist, example: losartan (Cozaar);

(g) A4Y, hypotensives - miscellaneous, example: nitroprusside sodium (Nitropress);

(h) A9A, calcium channel blocking agents, example: nifedipine (Procardia);

(i) C4G, insulins;

(j) C4K, hypoglycemics - insulin-release stimulant type, example: tolbutamide (Orinase);

(k) C4L, hypoglycemics - biguanide type (non-sulfonylureas), example: metformin (Glucophage);

(l) C4M, hypoglycemics - alpha-glucosidase inhib. Type (N-S), example: miglitol (Glyset);

(m) M0E, antihemophilic factor VIII;

(n) M0F, antihemophilic factor IX;

(o) M4E, lipotropics (cholesterol lowering agents), example: pravastatin (Pravachol);

(p) R1M, loop diuretics, example: furosemide (Lasix);

(q) V1A, alkylating agents, example: chlorambucil (Leukeran);

(r) V1B, antimetabolites, example: methotrexate;

(s) V1C, vinca alkaloids, example: vinblastine (Velban);

(t) V1D, antibiotic antineoplastics, example: mitomycin (Mithracin);

(u) V1E, steroid antineoplastics, example: megestrol (Megace);

(v) V1F, antineoplastics, miscellaneous, example: tamoxifen (Nolvadex);

(w) W5B, HIV-specific, example: didanosine (Videx);

(x) W5C, HIV-specific - protease inhibitor; example: indinavir (Crixivan);

(y) Z2E, organ transplant immunosupressive agents, example: cyclosporine (Sandimmune);

(z) W1A, penicillins;

(aa) W1B, cephalosporins;

(bb) W1C, tetracyclines;

(cc) W1D, macrolides;

(dd) W1E, chloramphenicol and derivaties;

(ee) W1F, aminoglycosides;

(ff) W1G, antitubercular antibiotics;

(gg) W1J, vancomycin and derivaties;

(hh) W1K, lincosamides;

(ii) W1M, streptogramins;

(jj) W1N, polymyxin and derivatives;

(kk) W1O, oxazolidinones;

(ll) W1P, antileprotics;

(mm) W1Q, quinolones;

(nn) W1S, thienamycins;

(oo) W1W, cephalosporins - 1st generation;

(pp) W1X, cephalosporins - 2nd generation;

(qq) W1Y, cephalosproins - 3rd generation;

(rr) W2A, absorbable sulfonamides;

(ss) W2E, anti-mycobaterium agents;

(tt) W2F, nitrofuran derivatives; and

(uu) W2G, chemotherapeutics, antibacterial, misc.

(4) The Department may grant a medical exemption to the seven (7) prescription limit in (1), by:

(a) Conducting an assessment for the medical exemption with input from the recipient's prescribing physicians;

(b) Reimbursing for all medically necessary prescriptions pending agency action on the assessment;

(c) Granting the medical exemption if a preponderance of the evidence establishes that the recipient's medical needs cannot reasonably be met unless the Department agrees to pay for more than seven (7) prescriptions in any calendar month;

(d) Deferring to the decision of the prescribing physician, in the event of a disagreement between the Department and the prescribing physician on which prescriptions are medically necessary; and

(e) Setting reasonable conditions on the grant of a medical exemption to assure the most cost-effective method of meeting the medical need, such as the use of generics and other factors.

**KEY: M[~~m~~]edicaid, prescriptions**
**[~~May 7, 2001~~]2002**
**26-18**

# Health, Health Care Financing, Medical Assistance Program
# R420-1
## Utah Medical Assistance Program

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24496
FILED: 02/15/2002, 15:41

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are necessary in order to realize savings within the Utah Medical Assistance Program (UMAP) as projected expenditures are higher than the allocated budget.

SUMMARY OF THE RULE OR CHANGE: UMAP will be limited to providing reimbursement for primary care, excluding specialty care as a covered benefit.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: $220,000 in General Fund monies will be saved in the FY 2002 budget.
❖ LOCAL GOVERNMENTS: None--There is no involvement of local government in this program.
❖ OTHER PERSONS: Payments will no longer be made to providers of medical specialty care. The Department will ask specialists to donate specialty services. There could be a loss of revenue to specialty providers of approximately $220,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be an increase in uncompensated patient care if there is a lack of donated specialty care. It is impossible to determine how this may affect any one person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In anticipation of implementing the 1115 Medicaid waiver for primary and preventative care in July of 2002, this change to UMAP will begin the transition for this population. The $220,000 in general fund savings will also help to reduce the revenue shortfall in this program. The loss in revenue to specialty care providers is unavoidable. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
MEDICAL ASSISTANCE PROGRAM
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:
Jacky Stokes, Michael J. Deily, or Ross Martin at the above address, by phone at 801-538-6418, 801-538-6406, or 801-538-6592, by FAX at 801-538-6952, 801-538-6478, or 801-538-6099, or by Internet E-mail at jstokes@doh.state.ut.us, mdeily@doh.state.ut.us, or lrmartin@doh.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

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**R420. Health, Health Care Financing, Medical Assistance Program.**
**R420-1. Utah Medical Assistance Program.**
**R420-1-1. Introduction and Authority.**

(1) The Utah Medical Assistance Program (UMAP) is designed to provide medically necessary care to low income clients who are not eligible for Medicaid or Medicare.

(2) This rule is authorized under Section 26-18-10.

**R420-1-2. Definitions.**

Terms used in this rule are defined in R414-1, except that "client" shall have the meaning defined below. In addition:

(1) "Chronic condition" means a condition characterized by its long duration or recurrence.

(2) "Client" means a person who has completed a current form MI-13 and been approved for UMAP eligibility.

(3) "Crime" means any felony, misdemeanor, or infraction, of which an individual is eventually convicted. Crimes also include those to which an individual pleads guilty or no contest, or those to which an individual enters into a diversion agreement as outlined in sections 77-2-5 through 77-2-9 UCA.

(4) "Emergency service" means a medical service performed to treat a condition that, in the absence of immediate medical attention, could reasonably be expected to result in death or permanent disability to the client. Immediate medical attention is treatment

given within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(5) "Emergency transportation" means an air or ground ambulance required to transport a client in need of an emergency service. UMAP shall not reimburse for emergency transportation services if a client could have been safely transported by a less costly method of transportation.

(6) "In custody" means being detained or held under guard by law enforcement personnel at the scene of a crime or in a detention facility, until unconditionally released, or released on probation or parole. The Department shall consider a resident of a jail, correctional facility, or half-way house to be in custody.

(7) "Life threatening condition" means a medical condition which, if not immediately treated, poses an imminent danger to life or will result in permanent disability. Disability is the limiting loss or absence of the capacity to perform activities of daily living or occupational demands. Permanent disability occurs when the degree of loss of this capacity becomes static or well-stabilized, and is not likely to improve despite continuing medical or rehabilitative measures.

(8) "Medically indigent" is abbreviated "MI", which is a prefix for UMAP form numbers.

(a) MI-13 is a UMAP form that explains to clients the rights and responsibilities they have as UMAP clients. A MI-13 form is current from the time it is completed until there is a break in eligibility of more than six consecutive months.

(b) MI-706 is a UMAP form entitled "UMAP Reimbursement Agreement" that authorizes reimbursement for a medical service.

(9) "Medically necessary" means reasonably calculated to prevent, diagnose, or cure conditions that endanger life, cause suffering and pain, cause physical deformity or malfunction, or threaten to cause a handicap, and there is no other equally effective course of treatment available or suitable for the client requesting the service that is more conservative or less costly.

(10) "Principal diagnosis at discharge" means the main medical problem, based on the best information available for review by UMAP.

(11) "Specialty care" means any physician service which is rendered or customarily rendered outside of a covered physicians office or clinic. A covered physician means a physician classified by Medicaid as having a practice specialty in General Preventative Medicine (01), Family Practice (08), Internal Medicine (Proctology) (11), Obstetrics-Gynecology (16), Public Health (47), General Practice (57), or Gynecology (58).

**R420-1-3. Client Eligibility Requirements.**

(1) To be eligible for UMAP services, clients must meet the criteria in R414-309. These criteria can be viewed at the UMAP administrative office located at 288 N. 1460 W., Salt Lake City, Utah, or at any site where the Department of Workforce Services or the Department of Health determines eligibility for clients.

(2) Before a client can receive services from UMAP, he must have a specific medical need that is within the UMAP scope of services and meets all other UMAP criteria.

**R420-1-4. Program Access Requirements.**

(1) UMAP has three medical clinics. Each clinic has on its staff a physician, or a physician assistant or nurse practitioner working under the supervision of a physician. For clients who reside in Salt Lake, Weber, Morgan, and Utah counties, if the physician or supervising physician determines it appropriate, the physician, physician assistant, or nurse practitioner shall evaluate and treat the client.

(2) The clinic may refer the client outside of the clinic only for treatment of covered conditions that cannot be treated in the clinic. The supervising physician shall decide the conditions that can be treated at the clinic. The clinic manager shall decide the services that are covered under UMAP.

(3) Clients residing in all other counties may contact the nearest Office of Workforce Services for a form MI-706. This office may then refer the client to a private physician who is willing to treat the client within the guidelines of UMAP criteria.

**R420-1-5. Service Coverage.**

(1) The scope of services covered by UMAP is limited to treatment of conditions that meet one or more of the following criteria, unless elsewhere excluded:

(a) an acute condition characterized by a rapid onset requiring prompt medical attention. UMAP shall not consider a condition to be acute once it is medically established to have been in existence for four months or more, regardless of when the client began experiencing symptoms. Recurring conditions are not acute;

(b) a life-threatening condition that is not psychiatric;

(c) a communicable disease that poses a health risk to the general public;

(d) a condition that will result in irreversible blindness if left untreated, blindness meaning no better than 20/200 visual acuity in the better eye after correction;

(e) [~~cataracts, if the correction is no better than 20/60 visual acuity in the better eye;~~

~~(f)~~ ]eyeglasses for a client in a work or training program if the client cannot participate in the work or training without the eyeglasses, or for a diabetic client who cannot see well enough to administer his own medication.

(2) UMAP may cover the following medical services:

(a) outpatient hospital services;

(b) physician services;

(c) midwife and birthing center services;

(d) radiology and lab services;

(e) emergency transportation services for both air and ground;

(f) dental services;

(g) pharmacy services;

(h) rural health services;

(i) home health services for I.V. antibiotics.

(3) For all UMAP covered services, the principal diagnosis at discharge from the hospital is the reason for the care. UMAP may not consider the other diagnoses when determining whether the service is covered by UMAP.

(a) UMAP shall pay a fixed triage fee for emergency transportation[~~, emergency room physicians,~~] and emergency room facility charges for services that do not result in an inpatient admission, if the admission diagnosis is a UMAP covered medical condition, but the principal diagnosis at discharge is psychiatric.

(b) The fixed triage fee shall constitute payment for the entire service. A notation on the form MI-706 advises the provider that he received authorization for only the minimal set triage fee.

(4) A provider or a client may resolve questions about coverage of a specific condition or service by contacting the appropriate UMAP clinic in Salt Lake, Morgan, Weber, or Utah

counties, or the Office of Workforce Services for all other counties, depending upon where the client lives.

**R420-1-6. Limitations and Excluded Services.**

(1) Conditions that are not covered by UMAP include:

(a) chronic pain, back pain, knee pain, joint pain, from recurring or chronic conditions;

(b) hernias that are not strangulated or incarcerated, carpal tunnel syndrome, bunions, nasal polyps;

(c) mental illness or disorder, drug addiction, alcohol addiction;

(d) obesity, hormonal imbalance, bulimia, anorexia nervosa;

(e) long-standing arthritis, except treatment of acute flare-ups is a covered service;

(f) allergies, cataracts, temporomandibular joint dysfunction, premenstrual syndrome, aseptic (avascular) necrosis;

(g) rhinitis, 24-hour gastritis, common cold, any condition for which there is no accepted medical therapy;

(h) a condition that is disabling, but does not meet the criteria listed in R420-1-5(1);

(i) a condition that is not covered by the Utah Medicaid program;

(j) a condition caused because of a snow skiing or snowboarding accident;

(k) a condition caused when the client was committing a crime. UMAP shall allow the client to present information to prove that involvement in the alleged crime did not cause or contribute to his medical condition. The client must submit this information within 60 days of the date of the denial;

(l) a condition caused when the client was being arrested;

(m) a condition caused when the client was injured by a law enforcement officer;

(n) a condition caused when the client was in custody;

(o) a condition that results from experimental or recreational use of drugs or chemicals, (with the exception of drinking distilled spirits, wine, or malt beverages, and smoking or chewing tobacco). UMAP considers use to be experimental or recreational if, on his own initiative, an individual uses:

(i) prescription drugs in a manner that is contrary to the physician's instructions for their use;

(ii) non-prescription drugs or chemicals in a manner that is contrary to package instructions, e.g., sniffing glue or other substances, drinking rubbing alcohol, laxative abuse;

(iii) illegal drugs, e.g., a drug or controlled substance, the use of which is a violation of state or federal law.

(p) UMAP determines use by an evaluation of the best available medical evidence regarding the condition.

(q) UMAP allows clients to present information to prove that experimental or recreational use of drugs or chemicals did not cause or contribute to the medical condition. Clients must submit this information within 60 days of the date of denial.

(2) Services that are not covered by UMAP include:

(a) cosmetic surgery;

(b) tympanoplasties;

(c) hysterectomies and pelvic surgery, except when there is a reasonable suspicion of a life threatening condition;

(d) back surgeries, knee surgeries, joint surgeries, for recurring or chronic conditions;

(e) psychiatry, or any service provided to a client while he is in a psychiatric facility, wing, ward, or bed;

(f) diagnostic work, unless a covered condition is suspected;

(g) speech pathology, audiology (except to rule out a brain tumor), audiometry (except to rule out a brain stem lesion);

(h) medical supplies, except syringes, lancets, test strips for diabetics, and ostomy supplies;

(i) medical equipment, except an oxygen concentrator if required 24 hours a day;

(j) prosthetic devices, except once when the need for the device arises from any authorized surgery;

(k) care in a long-term care facility, physical therapy, rehabilitative services, chiropractic services;

(l) dental work (except for exam, x-ray, and extraction of infected teeth), dentures;

(m) sterilization (tubal ligation, vasectomy, etc.), abortion (unless the life of the mother would be endangered if an abortion were not performed), birth control;

(n) elective surgery, organ transplants;

(o) liver biopsy or use of Interferon when being prescribed for treatment of Hepatitis C;

(p) treatment in a pain clinic;

(q) non-emergency use of an emergency room or emergency transportation;

(r) a service that is not covered by the Utah Medicaid program;

(s) a service if the department determines that there is or was an effective less-costly alternative;

(t) a service provided to treat a medical condition, if the need for treatment arose while the client was in custody;

(u) a service for a condition that is a complication of, or a follow-up service for, a non-covered UMAP service. The only exception would be if the service was not covered as a result of lack of client eligibility;

(v) specialty care, unless it is care that is provided while the client is receiving inpatient services for a condition that meets UMAP service coverage criteria, or unless it is for interpretation of x-rays which were ordered in conjunction with a UMAP covered service.

**R420-1-7. Form MI-706.**

(1) UMAP may only pay for a service authorized on a form MI-706. The client must obtain the form MI-706 before the service is provided. The client may obtain the form MI-706 after the service is provided if the service is within UMAP scope of services, meets all other UMAP criteria, and:

(a) is a follow-up service for a surgery that UMAP has authorized. Follow-up services are for normal, uncomplicated post-surgery hospitalization, office follow-ups, or other services provided within six weeks of the surgery and directly related to the surgery; or

(b) is an emergency service; or

(c) is a service that was provided before UMAP approved the client for eligibility, and before the client had completed a current form MI-13. The client must request the form MI-706 no later than one year after the date of service, or the date UMAP approved his eligibility, whichever is later. The client shall provide any documentation that UMAP requires, or the client wants considered, to make scope-of-service decisions.

(2) A client must present the form MI-706 to the provider before receiving any service, except for situations in which there is no UMAP requirement for the client to obtain the form MI-706 prior to receiving the service. If a client presents a form MI-706 to a provider before receiving a service, and the provider accepts the form MI-706, the provider may not hold the client financially liable for the service that was provided, whether or not UMAP reimburses

the provider. If a client does not present a form MI-706 to a provider, or if the provider does not accept the form MI-706, the provider may hold the client financially liable for the service and treat the client as a "self-pay" patient. Any time a provider receives a form MI-706, and bills UMAP using the MI-706 number, UMAP shall consider that the provider has accepted the form MI-706.

(3) After a client has completed a current form MI-13 and is approved for UMAP eligibility, he must present a form MI-706 to the provider for all non-emergency services before the services are provided.

**R420-1-8. Claims.**

(1) A provider shall submit a claim for UMAP services in the same way he submits a bill for Utah Medicaid services, except the provider must submit a form MI-706 number for UMAP services. If UMAP has authorized a service, a form MI-706 number will be printed on top of the form MI-706. The provider shall enter this number in the appropriate box on the invoice. The provider shall submit the claim no later than 12 months after the date of service or six months after the form MI-706 was issued, whichever is later.

(2) If a provider timely submits a claim and the claim is denied because there is no form MI-706, the provider may resubmit the claim to UMAP no later than one year after the date of service or two months after the date of denial, whichever is later. The provider shall include with the resubmitted claim a copy of the remittance advice showing the denial, and documentation explaining the nature of the medical care provided.

**R420-1-9. Reimbursement.**

UMAP shall only reimburse Utah Medicaid providers who accept payment from UMAP as payment in full for the service provided. UMAP adopts the Utah Medicaid reimbursement policies and payment rates for services covered by UMAP, with the following exception.

A client is required to pay a $1 co-pay for each UMAP covered pharmacy item (those billed using a NDC code) each time the item is dispensed or purchased, not to exceed in aggregate $5 per client per month.

Because inpatient hospital services are not a benefit of UMAP, UMAP shall not reimburse for these services.

**R420-1-10. Third Party Liability.**

(1) UMAP may not reimburse for covered medical services if payment for the service can be, or could have been, obtained from other third-party sources. If partial payment is made by a third-party payor, UMAP shall pay the difference up to the limits set by Medicaid.

(2) Clients and providers shall disclose potentially liable third parties. When any other coverage is available (such as treatment at the Veterans Administration Hospital), the UMAP clinic or provider shall refer the client there for treatment, and UMAP may not authorize payment for those services.

(3) Clients who are potentially eligible for services through the Ryan White Title II Aids Drug Assistance Program (ADAP) must apply for, and follow through with their application for ADAP. UMAP shall not pay if the client fails to cooperate in obtaining benefits through that program.

**R420-1-11. Client Rights and Responsibilities.**

(1) The client shall make an appointment to see office or clinic staff.

(2) If a client misses an appointment in a UMAP clinic, the client shall have two options regarding future appointments. The client may come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments, or the client may make a co-payment before being seen at his next appointment. The co-payment is $1 for missing one appointment, $2 for missing two consecutive appointments, and $3 for missing three consecutive appointments. If the client misses more than three consecutive appointments, the client must come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments. Clients may cancel UMAP clinic appointments up to two hours before the appointment with no penalty.

(3) If a client misses an appointment with a private provider, the client shall make a $5 co-payment to UMAP for each of the client's next two appointments with private providers before the client will be given a form MI-706 for these appointments. If the client keeps these appointments, UMAP will refund the $5 as soon as the client returns to UMAP and UMAP verifies that the client kept the appointment. UMAP shall consider appointments with private providers to be missed if the client cancels the appointment less than 24 hours before the appointment.

(4) UMAP may deny services to a client who verbally or physically abuses a member of the UMAP staff.

(5) UMAP shall send a Notice of Denial to a client who is denied coverage for a requested medical treatment. If a client or a provider is aggrieved by any action or inaction of the department, the person aggrieved may request a hearing in accordance with R410-14. A provider does not have standing to contest issues concerning scope of services or the client's eligibility status.

(6) The client shall be responsible for making a timely request for a form MI-706. If he fails to obtain the form MI-706, the client shall be liable for any costs incurred.

**KEY: indigent, M[~~m~~]edicaid, UMAP**
**[~~June 25, 2001~~]2002**
**Notice of Continuation July 21, 1997**
**26-1-5**
**26-18-10**

## Human Services, Mental Health
# R523-1-19
## Prohibited Items and Devices on the Grounds of Public Mental Health Facilities

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24460
FILED: 02/07/2002, 12:54

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the language to mirror the language that is in state statue. The language that is currently in effect reads "weapon-free areas" and it is changed to read "secure areas". Also, included are references in State Statue that allows the Division of Mental Health to promulgate rules regarding weapons.

SUMMARY OF THE RULE OR CHANGE: This changes the language from "weapon free areas" to secure areas" and references the State Statues that allow the Division of Mental Health to promulgate a rule. The change prohibits employees, clients, and visitors from having any weapons on their person or displayed in their vehicles while on the grounds of any community mental health center facility. Each mental health facility will give prominent visual notice to visitors that the facility is a secure area. The rule allows an exception for law enforcement officers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-12-202 and 76-10-523.5, and Subsections 76-8-311.1(d) and 76-8-311.3(2)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This provision is already in effect, this amendment makes technical changes to the original language.
❖ LOCAL GOVERNMENTS: None--This provision is already in effect, this amendment makes technical changes to the original language.
❖ OTHER PERSONS: None--This provision is already in effect, this amendment makes technical changes to the original language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This provision is already in effect, this amendment makes technical changes to the original language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This is a technical change and will not effect businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
MENTAL HEALTH
120 N 200 W 4TH FL
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Janina Chilton at the above address, by phone at 801-538-4072, by FAX at 801-538-3993, or by Internet E-mail at jchilton@hs.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

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**R523. Human Services, Mental Health.**
**R523-1. Policies and Procedures.**
**R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.**

Pursuant to the requirements of Subsection 62A-12-202 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have[~~with~~] any contracts with local mental health [~~authorities~~]authority and/[-]or the Utah State Division of Mental Health are designated as [~~weapon-free areas~~]secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of [~~weapon-free area~~]secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.[~~, unless the facility is defined as a secure facility and has policies and procedures directing the storage of weapons.~~]

**KEY: bed allocation, due process, prohibited items and devices, fees**
**[~~July 2, 1999~~]2002**
**Notice of Continuation December 17, 1997**
**62A-12-102**
**62A-12-104**
**62A-12-209.6(2)**
**62A-12-283.1(3)(a)(i)**
**62A-12-283.1(3)(a)(ii)**

▼ ▼

# Human Services, Recovery Services
# R527-35
## Non-AFDC Fee Schedule

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24493
FILED: 02/15/2002, 09:44

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule references the old AFDC (Aid to Families with Dependent Children) program and contains the outdated practice of charging a reduced fee when a federal tax refund less than $25 is intercepted and charging the full $25 fee when the intercept is in the $25 to $50 range. The edition year of the Code of Federal Regulations (CFR) cite is missing and needs to be added. The fee for processing child support payments needs to be specified as an "administrative" fee and increased in accordance with a recent decision by the Health and Human Services Subappropriations committee of the State legislature. Legislative intent language in H.B. 1 Supplemental Bill (2002 General Session) states, "It is the

intent of the Legislature that the Office of Recovery Services amend its rules to increase the check processing fee to $5.00 per check up to a maximum of $10.00 per month." In addition, clarification is needed regarding: 1) the full IRS enforcement fee and the conditions under which it applies, and 2) the term "excluded" as it relates to genetic testing.

SUMMARY OF THE RULE OR CHANGE: In the catchlines of Rule R527-35 and Section R527-35-1, "AFDC" has been replaced with "IV-A". In the introductory paragraph, the year of the current edition of the CFR cite has been added and "AFDC" has been replaced with "IV-A financial assistance". Additional verbiage has been added to "...the full IRS enforcement fee..." to specify that the case must qualify for full IRS collection services and that those services must be requested by the obligee and certified by the U.S. Secretary of the Treasury before the fee is charged. The Parent Locator Service fee has not been changed, but will appear as "$20.00" instead of "$20". The words, "as the biological father" have been added to Subsection R527-35-1(2) immediately following "...the alleged father is excluded" to provide clarification. In Subsection R527-35-1(3) the fee for processing child support payments has been specified as "an administrative" fee and changed from $3.50 per payment, not to exceed $7 per month to $5.00 per payment, not to exceed $10.00 per month. In Subsection R527-35-1(4) the statement has been deleted that authorizes a reduced fee for intercepting a federal tax refund when the amount of the refund is less than $25, "AFDC" has been replaced with "IV-A", and additional verbiage has been added to make it clear that the $25 fee only applies when the refund is $50 or more and that a reduced fee only applies when the refund is more than $25 but less than $50. The method of calculating the reduced fee has also been included.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-11-107, and 45 CFR 302.33 (2001)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed rule change involving the fee for intercepting an obligor's federal tax refund will have no additional impact on the state budget because it reflects current agency procedures. The changes involving updating the CFR cite, replacing "AFDC" with "IV-A" or "IV-A financial assistance", clarifying "full IRS enforcement fee", adding ".00" to "$20", and refining the meaning of "excluded" are essentially nonsubstantive and will also have no impact on the state budget. The change in the fee for processing child support payments which is mandated by the legislature is intended to generate additional state revenue of $1.50 to $5.00 per month for each Non-IV-A child support case receiving one or more payments.

❖ LOCAL GOVERNMENTS: None--Administrative rules of the Office of Recovery Services do not apply to local governments.

❖ OTHER PERSONS: None of the proposed rule changes, except the increase in the administrative fee for processing Non-IV-A child support payments, will create additional financial impact on other persons. The federal tax intercept fee described in the proposed rule change is already in practice. Applicants or recipients of Non-IV-A child support services will experience $1.50 to $5.00 in additional costs each month payments are received on their cases.

COMPLIANCE COSTS FOR AFFECTED PERSONS: With the exception of the increase in the administrative fee for processing Non-IV-A child support payments, the proposed changes will not result in additional compliance costs for affected persons because the changes are either non-substantive or reflect current agency procedures. An applicant or recipient of Non-IV-A child support services will experience an increased monthly cost of $1.50 when one payment is credited to his case and $5.00 when more than one payment is credited to his case; however, the obligor who pays the child support will not be charged a payment fee or the amount of the fee increase.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule involves specified fees that may be charged to individuals who have applied for and are receiving child support services. The fees are paid directly to the Office of Recovery Services (ORS) by those individuals or are deducted from payments that ORS has received. Employers are not required to be involved in deducting and remitting any of these fees from an employee?s earnings. It is not expected that this rule or the proposed rule changes will have a direct fiscal impact on any business.

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:

Wayne Braithwaite at the above address, by phone at 801-536-8986, by FAX at 801-536-8509, or by Internet E-mail at wbraithw@hs.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Emma Chacon, Director

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**R527. Human Services, Recovery Services.**
**R527-35. Non-[~~AFDC~~]IV-A Fee Schedule.**
**R527-35-1. Non-[~~AFDC~~]IV-A Fee Schedule.**

Pursuant to 45 CFR 302.33 (2001) the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving [~~AFDC~~]IV-A financial assistance or Medicaid, one or more fees for specific services. These fees are itemized below:

The following fee, which has been established by the federal government:

1. the full IRS enforcement fee of $122.50 is charged if a case qualifies for full IRS collection services, the obligee requests those services, and the amount of the child support obligation is certified for those services by the United States Secretary of the Treasury.

The following fees, which have been established by the Office:

1. a Parent Locator Service fee of $20.00;

2. the cost of genetic testing if the alleged father is excluded as the biological father;

3. [~~a~~]an administrative fee of $[~~3.50~~]5.00 per payment processed, not to exceed $[~~7~~]10.00 per month;

4. a fee of $25.00[~~ or the amount of the offset whichever is less~~], to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-[~~AFDC~~]IV-A support arrearage if the refund is $50.00 or more. If the refund is more than $25.00 but less than $50.00, the fee is the refund amount minus $25.00.

**KEY: child support**
**[~~February 6, 1996~~]2002**
**Notice of Continuation October 31, 1997**
**62A-11-107**

# Human Services, Youth Corrections
# R547-1-14
## General Safety

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24474
FILED: 02/12/2002, 16:39

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division plans to add a new rule dealing with weapons in facilities, R547-14. The deletions to this section (R547-1-14) better reflect how the Division will address this issue. (DAR NOTE: The proposed new rule of R547-14 is under DAR No. 24473 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This amendment deletes reference to maintaining firearms on the ground or within structures of the facilities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-12-202, 76-10-523.5, and 53-5-710; and Subsections 76-8-311.1(d) and 76-8-311.3(2)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This provision is already in effect. This amendment makes changes to the original language.
❖ LOCAL GOVERNMENTS: None--This provision is already in effect. This amendment makes changes to the original language.
❖ OTHER PERSONS: None--This provision is already in effect. This amendment makes changes to the original language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This provision is already in effect. This amendment makes changes to the original language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on businesses. This is a technical amendment only.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
YOUTH CORRECTIONS
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at jhammer@hs.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Blake Chard, Director

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**R547. Human Services, Youth Corrections.**
**R547-1. Residential and Nonresidential, Nonsecure Community Program Standards.**
**R547-1-14. General Safety.**

01. The program shall have written procedures and a system that helps provide for staff and participant safety and privacy needs, and assists in protecting and preserving personal property.[

~~02. A residential or nonresidential facility, including staff, residents, and visitors shall not maintain any firearm or chemical weapon on the ground or within the structures of the facility.~~]

03. Each residential facility shall have 24-hour telephone service. Emergency telephone numbers, including fire, police, physician, poison control, health agency and ambulance shall be conspicuously posted adjacent to the telephone.

04. A residential or nonresidential program shall notify Youth Corrections immediately of a fire or other disaster which might endanger or require the removal of youth for reasons of health and safety.

05. All containers of poisonous, toxic and flammable materials kept in a facility shall be prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute hazards to the youth in care of staff.

06. Porches, elevated walkways and elevated play areas within a facility shall have barriers to prevent falls.

07. Every required exit, exit access and exit discharge in a facility shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.

08. The use of candles shall not be allowed in sleeping areas of a residential facility.

09. Power driven equipment used by the facility shall be kept in safe and good repair. Such equipment shall be used by youth only

under the direct supervision of a staff member and according to the state law.

10. A facility shall have procedures to ensure the facility is protected from infestation by pests, rodents or other vermin.

11. Youth in care of a program shall swim only in areas considered by responsible staff as being safe. A certified individual shall be on duty when the youth are swimming. A certified individual is one who has a current water safety instructor certificate or senior lifesaving certificate from the Red Cross or its equivalent.

12. All on-grounds pools shall be enclosed with safety fences and shall be regularly tested to ensure that the pool is free of contamination.

13. On-ground pools shall comply with Department of Public Health requirements concerning swimming pools.

14. A residential or nonresidential facility shall have written policy and procedure specify the facility's fire prevention regulations and practices to ensure the safety of staff, participants and visitors. These include, but are not limited to: provision for an adequate fire protection service; a system of fire inspection and testing of equipment by a local fire official at least quarterly; smoke detectors; fire extinguishers, alarm systems and fire exits.

15. The facility shall comply with the regulations of the state or local fire safety authority, whichever has primary jurisdiction over the agency.

16. A residential or nonresidential facility shall have written procedures for staff and youth to follow in case of emergency or disaster. These procedures shall include provisions for the evacuation of buildings and assignment of staff during emergencies.

17. A residential or nonresidential facility shall train staff and youth to report fires and other emergencies appropriately. Youth and staff shall be trained in fire prevention.

18. A residential or nonresidential facility shall conduct emergency drills which shall include actual evacuation of youth to safe areas at least quarterly. The facility shall ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies and ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment in the facility:

A. A record of such emergency drills shall be maintained;

B. All persons in the building shall participate in emergency drills;

C. Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions in case of fire or other disasters;

D. The facility shall make special provisions for evacuation of any physically handicapped youth in the facility; and

E. The facility shall take special care to help emotionally disturbed or perceptually handicapped youth understand the nature of such drills.

19. A residential or nonresidential facility shall maintain an active safety program including investigation of all incidents and recommendations for prevention.

20. A residential facility or nonresidential alternative program shall ensure that each youth is provided with the transportation necessary for implementing the youth's service plan.

21. A residential facility or nonresidential alternative program shall have means of transporting youth in case of emergency.

22. Any vehicle used in transporting youth in care of the program shall be properly licensed and inspected in accordance with state law.

23. Any staff member of a residential or nonresidential alternative program or other person acting on behalf of the program operating a vehicle for the purpose of transporting youth shall be properly licensed to operate that class of vehicle according to state law.

24. A residential or nonresidential alternative program shall not allow the number of persons in any vehicle used to transport youth to exceed the number of available seats in the vehicle. Seat belts will be available for each seat and use is mandatory.

25. All vehicles used for the transportation of youth shall be maintained in a safe condition, be in conformity with all applicable motor vehicle laws, and be equipped in a fashion appropriate for the season.

26. A residential or nonresidential alternative program shall ensure that there is adequate supervision in any vehicle used by the facility to transport youth in care.

27. Identification of vehicles used to transport youth in care of a program shall not be of such nature as to embarrass or in any way produce notoriety for the youth.

28. A residential or nonresidential alternative program shall ensure that any vehicle used to transport youth has at least the minimum amount of liability insurance required by State law.

29. A residential or nonresidential alternative program shall ascertain the nature of any need or problem of a youth which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The program shall communicate such information to the operator of any vehicle transporting youth in care.

30. Youth in the care of a program shall not engage in any potentially dangerous activity without adequate supervision and training by qualified adults.

**KEY: diversion programs, juvenile corrections, licensing, prohibited items and devices**
**[~~December 1, 1995~~]2002**
**Notice of Continuation June 24, 1997**
**62A-7-119**

# Human Services, Youth Corrections
# R547-2-14
## Security and Control

### NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24475
FILED: 02/12/2002, 16:39

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division plans to add a new rule dealing with weapons in facilities, R547-14. The deletions to this section (R547-2-14) better reflect how the Division will address this issue. (DAR NOTE: The proposed new rule of R547-14 is under DAR No. 24473 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This amendment deletes reference to maintaining firearms on the ground or within structures of the facilities that are not designated as "secure areas."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-12-202, 76-10-523.5, and 53-5-71; and Subsections 76-8-311.1(d) and 76-8-311.3(2)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This provision is already in effect. This amendment makes changes to the original language.
❖ LOCAL GOVERNMENTS: None--This provision is already in effect. This amendment makes changes to the original language.
❖ OTHER PERSONS: None--This provision is already in effect. This amendment makes changes to the original language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This provision is already in effect. This amendment makes changes to the original language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect to businesses. This is a technical amendment only.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
YOUTH CORRECTIONS
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at jhammer@hs.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Blake Chard, Director

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**R547. Human Services, Youth Corrections.**
**R547-2. Juvenile Detention Standards.**
**R547-2-14. Security and Control.**

The greatest degree of security for staff and residents is achieved through positive relationships between these groups; therefore, programs should emphasize positive relationships.

(1)(a) There shall be a staffing plan which provides increased resident care staffing during program periods.

(b) There shall be a minimum of two detention care workers on duty when there are two or more youth in the facility, one of whom is a female when females are housed in the facility.

(c) Sufficient staff shall be available so that residents are not left unsupervised at any time.

(d) At least one staff person shall always be present to perform duties and functions not directly connected with supervision.

(e) During the day more staff shall be available to provide programs in the facility.

(2) Outside lighting should be sufficient to provide visibility for surveillance of all areas of the facility perimeter. Security devices which pose a serious threat to the safety of youth should not be utilized. (ACA 8282)

(3) There is a system to physically count detained youth. There shall be at least one population count per shift, a count when youth are moved from area to area, and a count at night. (ACA 8283)

(4) A master population list or locater board shall be established and maintained.

(5) There is a manual containing the facility's policies and procedures for security and control, which includes detailed instructions for implementing these procedures; the manual is made available to all personnel and is reviewed annually and updated as necessary. These procedures should be written and available to all staff, and should address, at a minimum:

(a) searches of residents, their rooms, or property;

(b) control of contraband;

(c) population counts;

(d) key, tool, or utensil control;

(e) visitation;

(f) emergency procedures;

(g) staffing. (ACA 8286)

(6) Procedure requires that all security perimeter entrances, exterior doors, and all doors which the facility administrator determines should be locked, are kept locked except when used for admission or exit of employees, detained youth or visitors, and in emergencies. Staff members only must exercise and control security measures, and shall not permit youth assistance.

(7) Procedure provides for regular and frequent inspections and maintenance of all security devices, locks, and doors to ensure their proper working order and to detect escape efforts. Any damaged or nonfunctioning security equipment must be promptly repaired. (ACA 8288)

(8) There shall be a procedure for regular searches of the facility, the youth confined, and any vehicles which are used to transport youth. The procedures must include consideration of the following factors:

(a) Respecting residents' rights to any property authorized by institution regulations;

(b) Avoiding undue force, embarrassment, unnecessary search or indignity to the individual.

(9) Search of Residents:

(a) With the exception of visual inspection of the mouth, no search of residents shall be conducted by a person of the opposite sex.

(b) After admission, strip searches shall be performed only when there is a reason to believe that weapons or contraband will be found.

(c) Body cavities searches shall be performed only when there is probable cause to believe that weapons or contraband will be found.

(i) With the exception of the mouth, during all body cavity searches performed visually, at least two personnel of the same sex as the youth being examined shall be present.

(ii) With the exception of the mouth, all body cavity searches performed manually shall be done by medically trained personnel, such as a doctor or nurse. At least one member of the examining team must be a member of the same sex as the youth being examined.

(10) Youth permitted to leave the facility or grounds temporarily shall be searched upon re-entry.

(a) The search shall be limited in scope to uncover items which the resident had access to while away from the facility.

(b) Where the youth's absence from the facility is the result of voluntary participation in an outside program, the youth should be given prior notice that such participation will subject the youth to routine searches upon re-entering the facility.

(11) Chemical agents for security uses are not used by facility staff. (ACA 8293)

(12) Material used for security purposes shall be designed so as to cause no injury to youth or staff.[

~~(13) Except in emergency situations, no person, including law enforcement personnel, shall be permitted to enter any section of the detention area with a gun or other weapon on his person. Weapons should not be permitted beyond a designated area to which detained youth have no access. Weapons shall be stored in a secure and locked drawer, cabinet, or container outside the security area. (ACA 8294)~~]

(14) Procedure governs the control and use of keys, to include: (ACA 8295)

(a) Youth shall not be permitted to handle, use, or have detention keys of any type in their possession.

(b) An inventory of all keys should be made at the beginning each shift.

(c) Detention keys must be stored in a secure key locker when not in use.

(d) There must be at least one full set of detention keys separate from those in use, stored in a safe place accessible only to staff members, for use in an emergency.

(15) Procedure governs the control and use of tools and culinary equipment, to include procedure for: (ACA 8296)

(a) After use, tools and equipment shall be accounted for by the staff member on duty and returned to their proper storage space.

(b) Eating utensils shall be accounted for after each meal and returned to the kitchen.

(c) Kitchen cutlery, such as paring knives and butcher knives shall be inventoried daily.

(16) When it is necessary for outside maintenance men to work in a detention living area, as appropriate, youth should be removed from the area and the living area carefully searched before youth are re-admitted. Maintenance tools should be carefully checked into and out of the detention area.

(17) Procedure governs the control and use of all flammable, toxic, and caustic materials. (ACA 8297)

(18) There are procedures for dealing with escapes or runaways; these are reviewed at least annually and updated as necessary. (ACA 8300)

(19) There are written plans that specify procedures to be followed in emergency situations (e.g., fire, disturbance, taking of hostages) which are made available to all personnel; these plans are reviewed annually and updated as necessary. (ACA 8301)

(20) All facility personnel receive periodic training and review in the implementation of written emergency plans, security measures and handling special incidents such as assault, disturbance, fire, and natural disasters. (ACA 8303 See also 8103 and 8106)

(21) Written plans govern space arrangements and procedures to follow in the event of a group arrest that exceeds the maximum capacity of the juvenile detention facility. These plans are reviewed annually and updated as needed. (ACA 8302)

(22) The facility has equipment necessary to maintain essential lights, power, and communications in the event of an emergency. The facility should have emergency power units, either battery or motor driven, to provide essential lighting and maintain communications. (ACA 8306)

(23) Emergency equipment is tested at least quarterly for effectiveness and is repaired or replaced if necessary. (ACA 8307)

(24) The program has a written policy restricting the use of physical force to instances of justifiable self-protection, protection of others, prevention of imminent and substantial destruction of property, and prevention of escapes, and only to the degree necessary, and in accordance with appropriate statutory authority. (ACA 8309)

(25) Transportation is available for use in emergencies. (ACA 8312)

**KEY: juvenile corrections, prohibited items and devices, firearms, weapons**
**[~~1992~~]2002**
**Notice of Continuation June 24, 1997**
**62A-7**

# Human Services, Youth Corrections
# R547-4-14
## Security and Control

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24476
FILED: 02/12/2002, 16:40

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division plans to add a new rule dealing with weapons in facilities, R547-14. The deletions to this section (R547-4-14) better reflect how the Division will address this issue. (DAR NOTE: The proposed new rule of R547-14 is under DAR No. 24473 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This amendment deletes reference to maintaining firearms on the ground or within structures of the facilities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-12-202, 76-10-523.5, and 53-5-710; and Subsections 76-8-311.1(d) and 76-8-311.3(2)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This provision is already in effect. This amendment makes changes to the original language.
❖ LOCAL GOVERNMENTS: None--This provision is already in effect. This amendment makes changes to the original language.
❖ OTHER PERSONS: None--This provision is already in effect. This amendment makes changes to the original language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This provision is already in effect. This amendment makes changes to the original language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on businesses. This is a technical amendment only.

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

HUMAN SERVICES
YOUTH CORRECTIONS
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at jhammer@hs.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Blake Chard, Director

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**R547. Human Services, Youth Corrections.**
**R547-4. Youth Detention/Group Shelter Standards.**
**R547-4-14. Security and Control.**

The greatest degree of security for staff and residents is achieved through positive relationships between these groups; therefore, programs should emphasize positive relationships.

(1) Sufficient staff shall be available so that residents are not left unsupervised at any time. At least one staff person shall always be present when youth are detained. (ACA 8281)

(2) Outside lighting should be sufficient to provide visibility for surveillance of all areas of the facility perimeter. Security devices which pose a serious threat to the safety of youth should not be utilized. (ACA 8282)

(3) There is a manual containing the facility's policies and procedures for security and control, which includes detailed instructions for implementing these procedures; the manual is made available to all personnel and is reviewed annually and updated as necessary. These procedures should be written and available to all staff, and should address, at a minimum:

(a) Searches of residents, their rooms or property;

(b) Control of contraband;

(c) Population counts;

(d) Key, tool or utensil control;

(e) Visitation;

(f) Emergency procedures; and

(g) Staffing. (ACA 8286)

(4) Procedure requires that all security perimeter entrances, exterior doors, and all doors which the facility administrator determines should be locked, are kept locked except when used for admission or exit of employees, detained youth or visitors, and in emergencies. Staff members only must exercise and control security measures, and shall not permit youth assistance.

(5) Procedure provides for regular and frequent inspections and maintenance of all security devices, locks and doors, to ensure their proper working order and to detect escape efforts. Any damaged or nonfunctioning security equipment must be promptly repaired. (ACA 8288)

(6) There shall be a procedure for regular searches of the facility, the youth confined, and any vehicles which are used to transport youth. The procedures must include consideration of the following factors:

(a) Conducting searches no more frequently than necessary to control contraband;

(b) Respecting residents' rights to any property authorized by institution regulations; and

(c) Avoiding undue force, embarrassment or indignity to the individual.

(7) Search of Residents.

(a) With the exception of visual inspection of the mouth, no search of residents shall be conducted by a person of the opposite sex.

(b) Strip searches shall be performed only when there is a reason to believe that weapons or contraband will be found.

(c) Body cavities searches shall be performed only when there is probable cause to believe that weapons or contraband will be found.

(i) With the exception of the mouth, during all body cavity searches performed visually, at least two personnel of the same sex as the youth being examined shall be present.

(ii) With the exception of the mouth, all body cavity searches performed manually shall be done by medically trained personnel, such as a doctor or nurse. At least one member of the examining team must be a member of the same sex as the youth being examined.

(8) Youth permitted to leave the facility or grounds temporarily shall be searched upon re-entry.

(a) The search should be limited to scope to uncover items which the resident had access to while away from the facility.

(b) Where the youth's absence from the facility is the result of voluntary participation in an outside program, the youth should be given prior notice that such participation will subject the youth to routine searches upon re-entering the facility.

(9) Chemical agents for security uses are not used by facility staff. (ACA 8293)

(10) Material used for security purposes shall be designed so as to cause no injury to youth or staff.[

~~(11) Except in emergency situations, no person, including law enforcement personnel, shall be permitted to enter any section of the detention area with a gun or other weapon on his person. Weapons should not be permitted beyond a designated area to which detained youth have no access. Weapons shall be stored in a secure and locked drawer, cabinet or container outside the security area. (ACA 8294)~~]

(12) Procedure governs the control and use of keys to include: (ACA 8295)

(a) Youth shall not be permitted to handle, use or have detention keys of any type in their possession.

(b) An inventory of all keys should be made each day.

(c) Detention keys must be stored in a secure key locker when not in use.

(d) There must be at least one full set of detention keys separate from those in use, stored in a safe place accessible only to staff members, for use in an emergency.

(13) Procedure governs the control and use of tools and culinary equipment to include procedure for: (ACA 8296)

(a) After use, tools and equipment shall be accounted for by the staff member on duty and returned to their proper storage space.

(b) Eating utensils shall be accounted for after each meal and returned to the kitchen.

(c) Kitchen cutlery, such as paring knives, butcher knives, shall be inventoried daily.

(14) When it is necessary for outside maintenance men to work in a detention living area, as appropriate, youth should be removed from

the area and the living area carefully searched before youth are re-admitted. Maintenance tools should be carefully checked into and out of the detention area.

(15) Procedure governs the control and use of all flammable, toxic and caustic materials. (ACA 8297)

(16) There are procedures for dealing with escapes or runaways; these are reviewed at least annually and updated as necessary. (ACA 8300)

(17) There are written plans that specify procedures to be followed in emergency situations (e.g., fire, disturbance, taking of hostages) which are made available to all personnel; these plans are reviewed annually and updated as necessary. (ACA 8301)

(18) All facility personnel receive periodic training and review in the implementation of written emergency plans, security measures and handling special incidents such as assault, disturbance, fire, and natural disasters. (ACA 8303 See also 8103 and 8106)

(19) Written plans govern space arrangements and procedures to follow in the event of a group arrest that exceeds the maximum capacity of the juvenile detention/shelter facility; these plans are reviewed annually and updated as needed. (ACA 8302)

(20) The facility has equipment necessary to maintain essential lights, power and communications in the event of an emergency. The facility should have emergency power units, either battery or motor driven, to provide essential lighting and maintain communications. (ACA 8306)

(21) Emergency equipment is tested at least quarterly for effectiveness and is repaired or replaced if necessary. (ACA 8307)

(22) The program has a written policy restricting the use of physical force to instances of justifiable self-protection, protection of others, prevention of imminent and substantial destruction of property, and prevention of escapes, and only to the degree necessary, and in accordance with appropriate statutory authority. (ACA 8309)

(23) Transportation is available for use in emergencies. (ACA 8312)

**KEY: juvenile corrections, prohibited items and devices, firearms, weapons**
**[~~1992~~]2002**
**Notice of Continuation June 24, 1997**
**62A-7**

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# Human Services, Youth Corrections
# R547-14
## Possession of Prohibited Items in Juvenile Detention Facilities

**NOTICE OF PROPOSED RULE**
(New Rule)
DAR FILE NO.: 24473
FILED: 02/12/2002, 16:11

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To outline enhanced weapon restrictions within secure areas of any juvenile detention facility.

SUMMARY OF THE RULE OR CHANGE: No person, including a person licensed to carry a concealed firearm, shall be permitted to enter a secure area of a juvenile detention facility with specified items.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 76-8-311.1, 76-8-311.3, 76-10-523.5, and 53-5-710

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Locked boxes will be provided at a cost of $5,355; and the signs will be: $340.
❖ LOCAL GOVERNMENTS: None--The Division will incur all costs of lock boxes and signage for state-owned facilities.
❖ OTHER PERSONS: None--The Division will incur all costs of lock boxes and signage for state-owned facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Private Providers costs: Locked Boxes - $11,333; and signs: $720.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
YOUTH CORRECTIONS
Room 419
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Judy Hammer at the above address, by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at jhammer@hs.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Blake Chard, Director

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**R547. Human Services, Youth Corrections.**
**R547-14. Possession of Prohibited Items in Juvenile Detention Facilities.**
**R547-14-1. Definitions.**
(1) "Juvenile detention facility" means a specific location that is operated directly or by contract by DYC for delivery of services to youth, and in which:
(a) youth in the custody of DYC are present; and
(b) public access is controlled.
(2) "Secure area" has the same meaning as provided in Section 76-8-311.1.

**R547-14-2. Weapon Restrictions.**

(1) No person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter a secure area of any juvenile detention facility with any items prohibited by UCA 76-8-311.1 or 76-8-311.3.

(2) The director or administrator of each juvenile detention facility shall:

(a) establish secure areas within the facility;

(b) prominently display the following notice at each entrance of a secure area:

"This is a secure area as defined in UCA 76-8-311.1. No person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter if that person has possession of any firearm, ammunition, dangerous weapon, explosive, or controlled substance. Violation of this prohibition is a third degree felony and violators are subject to prosecution. Firearms may be placed in secure weapons storage as provided by the facility."; and

(c) provide secure weapon storage at each entrance to a secure area facility.

**KEY: prohibited items, prohibited devices, firearms, weapons**
**2002**
**76-8-311.1**
**76-8-311.3**
**76-10-523.5**
**53-5-710**

# Workforce Services, Administration
# R982-301
## Councils

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24471
FILED: 02/08/2002, 12:43

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for this rule change is to establish a process for removal of regional council members and authorize the creation of regional council committees.

SUMMARY OF THE RULE OR CHANGE: The rule change establishes a process for removal of regional council members. The rule change allows the regional council to establish committees and assign regional council members to committees.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-206(2)(a)(iv)(A), 35A-1-206(2)(a)(iv)(B), 35A-1-103(2)(a)(i), and 35A-2-103(2)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no costs or savings associated with this change because the costs associated with convening regional council meetings have been budgeted.

❖ LOCAL GOVERNMENTS: There are no costs or savings associated with this change because local government representatives will continue to serve on regional councils and incur the same costs associated with their service.

❖ OTHER PERSONS: There are no costs or savings associated with this change because private individuals and private industry representatives will continue to serve and incur costs associated with their service as they have done in the past.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this new rule because all costs related to this rule are included within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on business as a result of these changes.

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

WORKFORCE SERVICES
ADMINISTRATION
140 E BROADWAY
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.wsadmpo@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/07/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2002

AUTHORIZED BY: Robert C. Gross, Executive Director

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**R982. Workforce Services, Administration.**
**R982-301. Councils.**
**R982-301-101. General Definitions.**

1. Employer. This rule adopts the definition of employer as used in Section 35A-4-203 except that for purposes of this rule, and for purposes of membership on the State Council on Workforce Services or a Regional Council on Workforce Services, an employer shall be a for-profit enterprise.

2. Median sized employer. The median sized employer shall be calculated, based on the previous calendar year, by the Division of Workforce Information and Payment Services each June 30. The median sized employer in a region is determined by arranging the establishments in an array by number of employees including the number of employees in each employer size interval, and choosing the employer in the array that employs the middle employee. The median sized employer in the state is determined similarly.

3. Attendance. Pursuant to Subsection 35A-2-103(6)(b), a council member may be considered present at the meeting when given permission by the council chair to participate in the business of the meeting by videoconference or teleconference.

4. Conflict of Interest. Prior to voting on any matter before a council, a council member must disclose and declare for the council records any direct financial benefit the member would receive from a matter being considered by the council.

**R982-301-102. State Council on Workforce Services.**

1. Authority. As required by Subsections 35A-1-206(2)(a)(iv)(A) and 35A-1-206(2)(a)(iv)(B), this rule defines Small Employers and Large Employers for membership on the State Council on Workforce Services.

2. Definitions.

a. "Small employer" means an employer who employs fewer employees than the median sized employer in the state.

b. "Large employer" means an employer who employs a number of employees that is greater than or equal to the median sized employer in the state.

c. "Median Sized Employer" as used in R982-301-102(2)(a) and R982-301-102(2)(b) is based solely on the number of employees an employer has in his/her employ in the state during the calendar year.

**R982-301-103. Regional Councils on Workforce Services.**

1. Authority. As required by Sections 35A-2-103(2)(a)(i) and 35A-2-103(2)(a)(ii) this rule defines small employers and large employers for membership on the Regional Councils on Workforce Services.

2. Definitions.

a. "Small employer" means an employer who employs fewer employees than the median sized employer in the region.

b. "Large employer" means an employer who employs a number of employees that is greater than or equal to the median sized employer in the region.

c. "Median Sized Employer" as used in R982-301-103(2)(a) and R982-301-103(2)(b) is based solely on the number of employees an employer has in his/her employ in the region during the calendar year.

3. Voting. A voting member of a regional council must either be present at a council meeting to vote or, if unable to attend a council meeting, may submit to a regional director in writing 24 hours in advance of a council meeting the member's vote on a specific matter or proposal before the council.

4. Council Leadership. A chair of a regional council may, in consultation with the regional director, appoint members of the council to be the vice chair or second vice chair to serve in leadership positions at the direction of the chair. The vice chair and second vice chair shall be representatives of private sector employers.

5. Committees. The regional council may establish one or more committees. The chair of a regional council may appoint members of the council to committees.

6. Removal. The consortium of counties may remove a regional council member in accordance with Subsection 35A-2-103(5)(e) or this rule.

a. Removal of a council member shall be initiated by the filing of a Petition for Removal by a resident of the region in which the council member serves. The petitioner(s) shall file the Petition for Removal with the consortium of counties and the consortium shall mail a copy of the petition to the regional director.

b. A Petition for Removal shall be in writing and shall set forth the name of the council member the petition seeks to remove, the name(s) of the petitioner(s), a clear and concise statement of the reasons for removal, and a request that the consortium of counties act to remove the member. Each petitioner shall sign the Petition for Removal.

c. Upon receipt of the Petition for Removal, the consortium of counties shall notify the council member who is the subject of the petition. The notice shall be in writing, include a copy of the petition, and mailed to the council member by certified mail, return receipt requested.

d. As soon as practicable after receiving the Petition for Removal, the consortium of counties shall meet to consider and vote on the Petition for Removal.

e. Action by the consortium of counties to remove the council member who is the subject of the petition shall require the affirmative vote of a majority of the full consortium of counties. The meeting shall be closed to the public in accordance with Subsection 52-4-5(1)(a)(i).

f. Removal of the council member shall be effective immediately upon announcement by the consortium of counties of an affirmative vote to remove. The decision of the consortium of counties shall be in writing, mailed to the council member by certified mail, return receipt requested, and a copy mailed to the regional director.

**KEY: councils**
**[~~May 18, 1998~~]2002**
**35A-1-104(1)**
**35A-1-206(2)(a)(iv)(A)**
**35A-1-206(2)(a)(iv)(B)**
**35A-2-103(2)(a)(i)**
**35A-2-103(2)(a)(ii)**

# Workforce Services, Employment Development
# R986-700
## Child Care Assistance

**NOTICE OF PROPOSED RULE**
(Amendment)
DAR FILE NO.: 24494
FILED: 02/15/2002, 12:45

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To bring the rule into compliance with state law and Department practice.

SUMMARY OF THE RULE OR CHANGE: Section R986-700-705 is being changed to make it more clear that an exception to the requirement of certified child care can be granted in unusual or extraordinary circumstances. Section R986-700-711 is being changed to bring the rules into compliance with the statute by not counting months when a client is obtaining a high school diploma toward the 24-month time limit. The Department also will not count months during which a client is enrolled in a formal course of study for adult basic education or learning English as a second language. Months during

which a client is attending a short-term workshop required or encouraged by the employer will also not count. Section R986-700-715 the change is if a client receives payment for which he was otherwise eligible but because of an error on the part of the Department not all of the eligibility criteria was documented, the client will not be responsible for repayment. A client will not be disqualified from receipt of future child care assistance if an overpayment was the result of agency error even if the client is considered by the Office of Recovery Services to be not cooperating in the repayment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-310

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no costs associated with these changes since the Department is already following these procedures.
❖ LOCAL GOVERNMENTS: This rule does not apply to local government and therefore there are no costs or savings to local government.
❖ OTHER PERSONS: There will be no costs associated with these changes to any person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with these changes to any person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton.wsadmpo@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2002

AUTHORIZED BY: Robert C. Gross, Executive Director

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**R986. Workforce Services, Employment Development.**
**R986-700. Child Care Assistance.**
**R986-700-705. Eligible Providers and Provider Settings.**

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related in this paragraph is as defined in R986-700-706(3).

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(4) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

([~~e~~]5) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

([~~5~~]6) If an exception is granted under paragraph (4) or (5) above, the exception will be reviewed at each of the client's [~~next~~] review dates to determine if an exception is still appropriate.

([~~6~~]7) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have felony criminal convictions, or misdemeanor convictions which are offenses against a person, or have been subject to a substantiated finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

([~~7~~]8) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by ORS or by a court.

**R985-700-711. ES CC to Support Education and Training Activities.**

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC [~~Child care~~ ]will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24 month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24 month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24 month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree in a marketable occupation.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate.

(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.

**R986-700-715. Overpayments.**

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected. If the eligibility criteria is cooperation with ORS and the client is not in compliance, through no fault of her own, even if the client refuses to cooperate at the time the mistake is discovered, payments made prior to the discovery of the mistake are not considered to have been an overpayment.

(2) If the Department has reason to believe that a CC overpayment has occurred, a referral for collection will be made to ORS.

(3) If ORS determines that the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(4) If a client receives an overpayment but was not at fault in creating the overpayment, the client will be responsible for repayment but there is no disqualification or ineligibility period even if the client is considered by ORS to be not cooperating in repayment.

(5) If ORS determines that the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (3) above, the client will be given an opportunity to repay the overpayment without a disqualification or ineligibility period for the first occurrence. If there is a second fault overpayment for reasons other than fraud in (3) above and the first overpayment has not been paid off, the client will be ineligible for CC until both overpayments have been satisfied. If the second overpayment occurred after the first overpayment was repaid in full, the second overpayment will not result in disqualification or ineligibility.

(6) If the client does not cooperate with ORS in its investigation or collection efforts, the Department will terminate CC upon notification from ORS that the client is not cooperating.

(7) These disqualification and ineligibility periods are in lieu of, and not in addition to, the disqualification periods found in R986-100-117.

(8) If the Department has reason to believe an overpayment has occurred, a referral to ORS has been made, and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined by ORS.

**KEY: child care**
**[~~September 20, 2001~~]2002**
**35A-3-310**

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**End of the Notices of Proposed Rules Section**

**Five-Year Notices of Review and Statements of Continuation Begin on the Following Page**

# 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).

## Agriculture and Food, Animal Industry
## R58-1
## Admission and Inspection of Livestock, Poultry, and Other Animals

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24477
FILED: 02/13/2002, 09:22

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 4, Chapter 31, authorizes the regulation of Livestock, Poultry and Other Animals. Subsection 4-2-2(1)(c)(i)authorizes the Department of Agriculture and Food to inquire in the cause and cure of the diseases among livestock. Subsection 4-2-2(1)(j) authorizes the Department of Agriculture and Food to promulgate 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: No comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is the intent of this rule to eliminate or reduce the spread of diseases among livestock by providing standards to be met in the movement of livestock within the State of Utah and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
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 or Mike Marshall at the above address, by phone at 801-538-7114 or 801-538-7160, by FAX at 801-538-7126 or 801-538-7169, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.mmarshall@state.ut.us

AUTHORIZED BY: Cary Peterson, Commissioner

EFFECTIVE: 02/13/2002

## Agriculture and Food, Animal Industry
## R58-6
## Poultry

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24478
FILED: 02/13/2002, 09:36

**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 4-29-1 authorizes the Department of Agriculture and Food to make and enforce 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: No comments were 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 guidelines for all poultry and hatching eggs entering Utah and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
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 or Mike Marshall at the above address, by phone at 801-538-7114 or 801-538-7160, by FAX at 801-538-7126 or 801-538-7169, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.mmarshall@state.ut.us

AUTHORIZED BY: Cary Peterson, Commissioner

EFFECTIVE: 02/13/2002

## Agriculture and Food, Animal Industry
# R58-8
## Testing and Vaccination of Bovine Livestock for Brucellosis Control

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24479
FILED: 02/13/2002, 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: Subsection 4-2-2(1)(j) authorizes the Department of Agriculture and Food to make and enforce rules. Section 4-31-16 authorizes the Department of Agriculture and Food to investigate and possibly quarantine any reported cases of contagious or infectious disease.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the requirements for the change of ownership of bovine livestock and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
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 or Mike Marshall at the above address, by phone at 801-538-7114 or 801-538-7160, by FAX at 801-538-7126 or 801-538-7169, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.mmarshall@state.ut.us

AUTHORIZED BY: Cary Peterson, Commissioner

EFFECTIVE: 02/13/2002

## Agriculture and Food, Animal Industry
# R58-18
## Elk Farming

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24480
FILED: 02/13/2002, 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: Section 4-39-106 authorizes the Department of Agriculture and Food to make and enforce 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: No comments 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 establishes the requirements for the ownership of elk farms within the State of Utah and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
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 or Terry Menlove at the above address, by phone at 801-538-7114 or 801-538-7166, by FAX at 801-538-7126 or 801-538-7169, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.tmenlove@state.ut.us

AUTHORIZED BY: Cary Peterson, Commissioner

EFFECTIVE: 02/13/2002

## Agriculture and Food, Regulatory Services

# R70-320

## Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24482
FILED: 02/13/2002, 10:35

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-2-2(1)(j) and Section 4-3-2 authorizes the Department of Agriculture and Food to make and enforce 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: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is the intent of this rule to encourage the sanitary production of milk, and to promote the sanitary processing of milk for manufacturing purposes and should be continued.

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 or Don McClellan at the above address, by phone at 801-538-7114 or 801-538-7145, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.dmcclell@state.ut.us

AUTHORIZED BY: Cary Peterson, Commissioner

EFFECTIVE: 02/13/2002

## Agriculture and Food, Regulatory Services

# R70-350

## Ice Cream and Frozen Dairy Foods Standards

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24483
FILED: 02/13/2002, 10:43

**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: Section 4-3-2 authorizes the Department of Agriculture and Food to make and enforce 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: No comments 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 establishes the standards for all frozen dairy foods and frozen dairy food mixes sold, bought, processed, manufactured, or distributed within the State of Utah and should be continued.

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 or Don McClellan at the above address, by phone at 801-538-7114 or 801-538-7145, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.dmcclell@state.ut.us

AUTHORIZED BY: Cary Peterson, Commissioner

EFFECTIVE: 02/13/2002

## Agriculture and Food, Regulatory Services

# R70-360

## Procedure for Obtaining a License to Test Milk for Payment

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24484
FILED: 02/13/2002, 10:48

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-3-2 authorizes the Department of Agriculture and Food to make and enforce 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: No comments 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 outlines the requirments that are necessary in order to obtain a license to test milk for payment and should be continued.

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 or Don McClellan at the above address, by phone at 801-538-7114 or 801-538-7145, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.dmcclell@state.ut.us

AUTHORIZED BY: Cary Peterson, Commissioner

EFFECTIVE: 02/13/2002

## Commerce, Occupational and Professional Licensing

# R156-9

## Funeral Service Licensing Act Rules

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24463
FILED: 02/07/2002, 13:33

**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: Title 58, Chapter 9, provides for the licensure of funeral service directors, funeral service apprentices, and funeral service establishments. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-9-3(3) provides that the Funeral Service Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 9, with respect to funeral service directors, funeral service apprentices, and funeral service establishments.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was last reviewed in March 1997, no changes have been made in the rule. As a result, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 9, with respect to funeral service directors, funeral service apprentices, and funeral service establishments.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@br.state.ut.us

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 02/07/2002

## Commerce, Occupational and Professional Licensing

# R156-15

## Health Facility Administrator Act Rules

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 24462
FILED: 02/07/2002, 13:27

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 15, provides for the licensure of health facility administrators. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-15-3(3) provides that the Health Facility Administrators Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 15, with respect to health facility administrators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 1997, it has been amended only once. In May 1998, the Division deleted the requirement that a law/rule examination be passed prior to licensure. No written comments were received by the Division as a result of this amendment. No other written comments have been received with respect to this rule since its last review in 1997.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 15, with respect to health facility administrators.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Daniel T. Jones at the above address, by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at dtjones@br.state.ut.us

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 02/07/2002

## Commerce, Occupational and Professional Licensing

# R156-71

## Naturopathic Physician Practice Act Rules

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 24464
FILED: 02/07/2002, 13:38

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 71, provides for the licensure of naturopathic physicians. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-71-201(3)(a) provides that the Naturopathic Physicians Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 71, with respect to naturopathic physicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was originally enacted in April 1997, it has been amended four times. When the rule was originally proposed in April 1997, an April 11, 1997, rule hearing was held and the Division received one written comment from Kent Bishop regarding a typographical error that appeared in the proposed rule. As a result of Mr. Bishop's comments, a nonsubstantive rule filing was made to this rule. The proposed rule was made effective on April 17, 1997. In December 1999, the Division amended the rule to add the formulary section of specific medications that naturopathic physicians can prescribe in their practice. A December 15, 1999, rule hearing was conducted and the Division received no written comments regarding the proposed rule. In May 2000, the Division again amended the rule by adding two additional medications to the formulary list. In June 2000, the Division again amended to delete testosterone from the formulary list. The Division received no written comments regarding either the May or June 2000 proposed amendments. In July 2001, the Division amended the rule by deleting the requirement that naturopathic physicians participate in a quality review. No written comments were received regarding the proposed amendments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 71, with respect to naturopathic physicians.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@br.state.ut.us

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 02/07/2002

## Education, Administration
# R277-617
## Authorization of Student Clubs and Organizations

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24456
FILED: 02/06/2002, 15:51

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-3-419(3) allows the State Board of Education to adopt rules regarding access to student clubs and organizations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

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 necessary direction to schools regarding access to student clubs and organizations.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/06/2002

## Human Services, Administration
# R495-810
## Government Records Access and Management Act

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24455
FILED: 02/06/2002, 15:37

**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: As required by Subsection 63-2-204(2), this rule specifies where and to whom a request to access of Department of Human Services records shall be directed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: To comply with Subsection 63-2-204(2): A governmental entity may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at (n/a), or by Internet E-mail at vfthomps@hs.state.ut.us

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 02/06/2002

## Human Services, Administration
# R495-878
## Department of Human Services Civil Rights Complaint Procedure

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24467
FILED: 02/07/2002, 17:07

**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 is promulgated pursuant to Subsection 63-46a-3(2) of the State Administrative Rulemaking Act and Federal Civil Rights statutes and regulations. The Department of Human Services adopts, defines, and publishes within this rule complaint procedures that incorporate due process standards and that provide for the prompt and equitable resolution of complaints filed in accordance with Federal Regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued to comply with current Utah and Federal statutes. No comments in opposition to this rule have been received.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at (n/a), or by Internet E-mail at vfthomps@hs.state.ut.us

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 02/07/2002

## Insurance, Administration
# R590-103
## Security Deposits

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24489
FILED: 02/14/2002, 06:51

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) gives the commissioner the authority to make rules to implement the Code. Subsection 31A-2-206(17) gives the commissioner specific authority to write a rule to implement Section 31A-2-206, "Receipt and Handling of Deposits." The purpose of the rule is to implement provisions relating to the required deposits with the commissioner and to adopt forms for that purpose.

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 written comments in 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 standardizes the forms and reporting requirements for securities held on deposit as required by the Code. The insurance commissioner is to access these securities in the event the insurance company is liquidated and the commissioner takes over the company. The deposits are to then be used for administrative and other expenses the commissioner will then be responsible to pay.

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@insurance.state.ut.us

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/14/2002

## Insurance, Administration
# R590-121
## Rate Modification Plan Rule

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24481
FILED: 02/13/2002, 10:32

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) is the general rulemaking provision of the insurance code allowing the commissioner to make rules to implement the code. Section 31A-2-203 clarifies the commissioner's authority to examine a licensee when he considers it necessary to enforce the requirements of the code. Section 31A-2-204 relates to the procedures of conducting an examination of a licensee. Section 31A-2-205 deals with the costs involved in an examination and who and how they are to be paid. Section 31A-19a-201, entitled Rate Standards, deals with how to determine if there is competition in the marketplace and if insurance rates are inadequate. Section 31A-19a-202 sets standards to determine if rates comply with the standards set in 31A-19a-201. Section 31A-19a-203 provides clarification about the process and requirements of filing rates with the department. Section 31A-19a-206 lists the times the commissioner may disapprove a rate filing and the procedures for the disapproval of the rate. Section 31A-23-302 gives the commissioner authority to determine through findings, those actions that are deceptive, misleading, discriminatory and unfair. Sections 31A-2-203, 31A-2-204, and 31A-2-205 are the authority for Subsection R590-121-5(5). Sections 31A-19-201, 31A-19-202, 31A-19-206, and 31A-23-302 are the authority for Subsection R590-121-5(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 received in 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: Insurers use this rule as a standard for developing the premiums they create for their policies.

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@insurance.state.ut.us

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/13/2002

## Insurance, Administration
# R590-133
## Variable Contracts

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24490
FILED: 02/14/2002, 08:38

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) provides general rulemaking authority to the insurance commissioner to implement the insurance code. Subsection 31A-5-217.5(6) gives specific rulemaking authority to regulate the issuance and sale of variable contracts as required in Section 31A-5-217.5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments 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 defines variable contract and agent as well as lists qualifications and reports the insurer is required to send to the insurance department and insured. This is the only place an insurer selling variable contracts is required to disclose information to the consumer regarding the financial status of the insurance company and the financial and nontechnical features of the variable contract he is purchasing or has purchased. The rule also includes additional consumer protection in the licensing requirements of the agent, particularly those requirements to disclose disciplinary action taken against the agent in the states he is doing business.

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@insurance.state.ut.us

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/14/2002

## Insurance, Administration
# R590-182
## Risk Based Capital Instructions

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24487
FILED: 02/13/2002, 13:38

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the insurance commissioner the authority to make rules to implement the provisions of Title 31A. It is with this authority that the commissioner has written this rule. Section 31A-17-601 provides the basic definition of risk based capitol and other terms necessary in the regulation of an insurer's risk based capitol.

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 written communications 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 directs insurers to the report form, overview, and instructions necessary in measuring their financial strength against established standards. It also provides the report form required to be filed with the insurance department annually. Not only does the program provide calculations but also gives instructions of actions to be taken if the calculations do not fit the required standards.

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@insurance.state.ut.us

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/13/2002

## Transportation, Administration
# R907-3
## Administrative Procedure

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 24457
FILED: 02/06/2002, 15:59

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is implemented to advise the public of the availability, for free inspection, of the Utah Department of Transportation's (UDOT) rules and policies, required by Utah Code Ann. Section 63-46a-3. It is issued pursuant to UDOT's general rulemaking powers, which are specified in Section 72-1-201.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received 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: UDOT believes it is advisable to inform members of the public of the availability of policies and rules and this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@dot.state.ut.us

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 02/06/2002

**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

Agriculture and Food
Animal Industry
No. 24194 (AMD): R58-7-3. Livestock Markets.
Published: December-1, 2001
Effective: February-12, 2002

No. 24191 (AMD): R58-19. Compliance Procedures.
Published: December-1, 2001
Effective: February-12, 2002

Regulatory Services
No. 24200 (AMD): R70-910. Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices.
Published: December-1, 2001
Effective: February-12, 2002

No. 24198 (AMD): R70-940. Standards and Testing of Motor Fuel.
Published: December-1, 2001
Effective: February-12, 2002

Health
Children's Health Insurance Program
No. 24063 (AMD): R382-10. Elegibility.
Published: October-15, 2001
Effective: February-7, 2002

Health Systems Improvement, Child Care Licensing
No. 24345 (AMD): R430-50-10. Fire, Safety, and Sanitation.
Published: January-15, 2002
Effective: February-15, 2002

No. 24346 (AMD): R430-60-13. Fire, Sanitation, and Safety.
Published: January-15, 2002
Effective: February-15, 2002

No. 24347 (AMD): R430-90-15. Safety.
Published: January-15, 2002
Effective: February-15, 2002

No. 24348 (AMD): R430-100-16. Safety.
Published: January-15, 2002
Effective: February-15, 2002

Insurance
Administration
No. 24310 (AMD): R590-206-4. Definitions.
Published: January-1, 2002
Effective: February-12, 2002

School and Institutional Trust Lands
No. 24333 (AMD): R850-41-1310. Prevention of the Spread of Noxious Weeds.
Published: January-15, 2002
Effective: February-15, 2002

**End of the Notices of Rule Effective Dates Section**

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# 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, 2002, including notices of effective date received through February 15, 2002, the effective dates of which are no later than March 1, 2002. 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).

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.state.ut.us/).

## RULES INDEX - BY AGENCY (CODE NUMBER)

**ABBREVIATIONS**

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

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| Human Services, Recovery Services | 24190 | R527-5 | AMD | 01/02/2002 | 2001-23/57 |
| | 24404 | R527-5 | 5YR | 01/16/2002 | 2002-4/47 |
| | 24433 | R527-34 | 5YR | 01/24/2002 | 2002-4/48 |
| | 24432 | R527-35 | 5YR | 01/24/2002 | 2002-4/48 |
| | 24438 | R527-201 | 5YR | 01/30/2002 | 2002-4/49 |
| **Civil Rights Act 1964** | | | | | |
| Human Services, Administration | 24467 | R495-878 | 5YR | 02/07/2002 | 2002-5/67 |
| **condemnations** | | | | | |
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| Human Services, Recovery Services | 24190 | R527-5 | AMD | 01/02/2002 | 2001-23/57 |
| | 24404 | R527-5 | 5YR | 01/16/2002 | 2002-4/47 |
| **conflict of interest** | | | | | |
| Human Resource Management, Administration | 24236 | R477-9 | AMD | 01/04/2002 | 2001-23/54 |

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| | 24367 | R156-55b | 5YR | 01/07/2002 | 2002-3/122 |
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| | 24415 | R916-2 | 5YR | 01/18/2002 | 2002-4/55 |
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| **correctional institutions** | | | | | |
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| Transportation, Administration | 24451 | R907-63 | 5YR | 02/01/2002 | 2002-4/54 |
| **day care** | | | | | |
| Public Safety, Fire Marshal | 24245 | R710-8 | AMD | 01/02/2002 | 2001-23/105 |
| **definitions** | | | | | |
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| **design-build** | | | | | |
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| **developmentally disabled** | | | | | |
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| | 24361 | R698-3 | 5YR | 01/03/2002 | 2002-3/129 |
| | 24450 | R907-62 | 5YR | 02/01/2002 | 2002-4/53 |
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| **disclosure requirements** | | | | | |
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| | 24479 | R58-8 | 5YR | 02/13/2002 | 2002-5/62 |
| **disease reporting** | | | | | |
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| **education finance** | | | | | |
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| **education finances** | | | | | |
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| **educational facilities** | | | | | |
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| **electricians** | | | | | |
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| Labor Commission, Safety | 24375 | R616-3 | 5YR | 01/10/2002 | 2002-3/127 |
| | 24295 | R616-3 | AMD | 01/15/2002 | 2001-24/14 |
| **employment support procedures** | | | | | |
| Workforce Services, Employment Development | 24240 | R986-100 | AMD | 02/01/2002 | 2001-23/113 |
| **enforcement (administrative)** | | | | | |
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| **extracurricular activities** | | | | | |
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| **filing deadlines**<br>Labor Commission, Industrial Accidents | 24280 | R612-1-11 | AMD | 01/15/2002 | 2001-24/9 |
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| **fire prevention**<br>Public Safety, Fire Marshal | 24243 | R710-4 | AMD | 01/02/2002 | 2001-23/94 |
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| | 24246 | R710-9 | AMD | 01/02/2002 | 2001-23/107 |
| **fireworks**<br>Public Safety, Fire Marshal | 24249 | R710-2 | AMD | 01/02/2002 | 2001-23/88 |
| **fish**<br>Natural Resources, Wildlife Resources | 24067 | R657-13 | AMD | 01/02/2002 | 2001-20/35 |
| **fishing**<br>Natural Resources, Wildlife Resources | 24067 | R657-13 | AMD | 01/02/2002 | 2001-20/35 |
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| | 24483 | R70-350 | 5YR | 02/13/2002 | 2002-5/63 |
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| **food stamps**<br>Workforce Services, Employment Development | 24250 | R986-900 | AMD | 02/01/2002 | 2001-23/121 |
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| **freedom of information**<br>Public Safety, Administration | 24363 | R698-2 | 5YR | 01/03/2002 | 2002-3/128 |

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| Corrections, Administration | 24274 | R251-111 | AMD | 01/28/2002 | 2001-24/2 |
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| Commerce, Occupational and Professional Licensing | 24202 | R156-66a | REP | 01/07/2002 | 2001-23/12 |
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| **guns** | | | | | |
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| **health care facilities** | | | | | |
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| **health facilities** | | | | | |
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| **health facility administrators** | | | | | |
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| **highway beautifications** | | | | | |
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| **housing** | | | | | |
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| Natural Resources, Wildlife Resources | 24289 | R657-38 | AMD | 01/15/2002 | 2001-24/17 |
| **impairment ratings** | | | | | |
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| | 24310 | R590-206-4 | AMD | 02/12/2002 | 2002-1/8 |
| **interconnections**<br>Public Service Commission, Administration | 24437 | R746-348 | 5YR | 01/30/2002 | 2002-4/52 |
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