UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Editor

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

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

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

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EDITOR'S NOTES

Correction Notice to the 2004 Rules Index

From September 15, 2003, through January 15, 2004, the Rules Indexes published in the *Utah State Bulletin* have contained an error. The indexes have incorrectly indicated that Rule R152-25a, Telephone and Facsimile Solicitation Act Rule (DAR No. 25724), was effective January 15, 2003. This entry should have listed Rule R151-35, Powersport Vehicle Franchise Act Rule, (DAR No. 25724), as effective January 15, 2003. Rule R152-25a has not been published in the *Utah State Bulletin*. The correct index entry will be published in the 2004 edition of the *Utah Administrative Rules Index of Changes* that will be available later this spring.

Questions about this error may be directed to Ken Hansen, Director, Division of Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114-1201, phone: 801-538-3777; FAX: 801-538-1773; or Internet E-mail: khansen@utah.gov.

End of the Editor's Notes Section

SPECIAL NOTICES

Commerce
Occupational and Professional Licensing

Public Hearing on Proposed Changes to Rule R156-47b, Massage Therapy Practice Act Rules (DAR No. 26937)

Notice is hereby given that the Division of Occupational and Professional Licensing will conduct a public rule hearing with respect to the proposed amendment to Rule R156-47b, Massage Therapy Practice Act Rules (DAR No. 26937, published in the March 1, 2004, Utah State Bulletin on page 5) on Tuesday, May 11, 2004, at 9:00 a.m. in Conference Room 4B of the Heber M. Wells Building, 160 East 300 South, Salt Lake City, UT.

At the time the proposed rule amendment was filed, the Division had indicated no hearing on the proposed changes would be conducted. However, after further review and comments received by the Division, the Division has determined that it would be best to conduct a public rule hearing on the proposed amendments.

Questions can be directed to Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov .

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

PROCLAMATION

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

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

NOW, THEREFORE, I, OLENE S. WALKER, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 55th Legislature of the State of Utah into a Seventh Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 21st day of April, 2004, at 12:00 noon, for the following purpose:

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

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

(State Seal)

Olene S. Walker
Governor

ATTEST:

Gayle F. McKeachnie
Lieutenant Governor

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 March 16, 2004, 12:00 a.m., and April 1, 2004, 11:59 p.m. are included in this, the April 15, 2004, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least May 17, 2004. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through August 13, 2004, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

Alcoholic Beverage Control, Administration
R81-1-3
General Policies

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27025
FILED: 04/01/2004, 09:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. This proposed rule was initially an internal department policy but is now proposed as a rule to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Subsection R81-1-3(5) is amended to include "any other person" (besides licensees, permittees, or package agencies) to whom interest may be charged for any debt owed to the Department of Alcoholic Beverage Control (DABC). "Any other person" includes individuals, groups, and businesses.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The proposed amendment to this rule authorizes DABC to charge interest on debts to any person, not just licensees, permittees, or package agencies. The state budget is not affected by this amendment.
❖ LOCAL GOVERNMENTS: None--The proposed amendment to this rule affects only the DABC's ability to charge interest on debts and has no affect on local governments.
❖ OTHER PERSONS: Persons owing debts to DABC may be affected financially by this proposed rule amendment since it authorizes the department to assess a legal rate of interest on all such debts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Subsection 32A-1-3(5) previously authorized the DABC to assess a legal rate of interest only to licensees, permittees and package agencies. This proposed amendment authorizes the department to also assess a legal rate of interest to any other person who owes debts to the department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment may have a fiscal impact on any business that owes a debt to the DABC because it authorizes the department to assess a legal rate of interest on that debt.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-3. General Policies.

(1) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor that is at least 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.

(2) 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.

(3) 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.

(4) 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.

(5) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee[~~-or~~], package agent, or any other person.

(6) 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.

(7) 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.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
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
R81-1-8
Consent Calendar Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27027
FILED: 04/01/2004, 09:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. This rule amendment is proposed to conform with the Rulemaking Act. (The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Section 32A-1-107 authorizes the Alcoholic Beverage Control (ABC) Commission to establish Department of Alcoholic Beverage Control (DABC) agency procedures including adjudicating violations of the liquor act. In order to expedite the adjudicative proceedings at its monthly public meeting, the ABC Commission uses a Consent Calendar and is proposing this rule amendment to define the purpose and use of the Consent Calendar in administrative rule.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Though there is a temporal savings in using the Consent Calendar, there is no monetary cost or savings to the state budget.
❖ LOCAL GOVERNMENTS: None--The Consent Calendar is used for the purpose of adjudicating violations of the liquor act and does not affect local governments.
❖ OTHER PERSONS: None--The Consent Calendar does not essentially change the way violations of the liquor act are adjudicated. It is a tool for expediting the adjudicative process and does not fiscally affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons experience no compliance costs as a result of having the adjudication of violations they have committed included on a Consent Calendar.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Establishing guidelines for using the Consent Calendar during adjudicative proceedings at the ABC Commission's monthly public meeting has no fiscal impact on businesses. The Consent Calendar merely expedites the adjudicative process.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
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
R81-1-21
Beer Advertising in Event Venues

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27028
FILED: 04/01/2004, 09:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. These provisions were originally adopted as an internal department policy, but are now being proposed as an amendment to the department's administrative rules to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed amendment to Rule R81-1 establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers who choose to purchase advertising space and/or time at large facilities such as sports arenas, ballparks, raceways, fairgrounds, equestrian facilities, etc. The provisions of this proposed rule outline circumstances and conditions when this type of advertising does not violate the "tied-house" provisions of Section 32A-12-603.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsection 32A-12-401(4)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This proposed rule amendment does not affect a cost or savings to the state budget. It only establishes guidelines for beer manufacturers and retailers when advertising beer products at large facilities.

❖ LOCAL GOVERNMENTS: None--Though some large facilities are owned and operated by local governments, this proposed amendment will not affect a cost or savings to local governments. The amendment is proposed to establish guidelines for advertising by beer manufacturers at these facilities.

❖ OTHER PERSONS: None--This proposed rule amendment does not provide a cost or savings to other persons. It only establishes "safe harbor" guidelines and limitations for the advertising of beer products by manufacturers and retailers at large facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Both beer manufacturers and retailers have an interest in advertising beer products in large facilities. Such advertising may have the appearance of being in violation of "tied-house" laws. This proposed rule amendment will not result in additional compliance costs for the affected persons, but will establish guidelines to keep those affected persons from potential administrative action for violating "tied-house" laws.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule should not fiscally impact the businesses involved. In fact, adherence to the provisions of this proposed rule amendment may potentially save businesses money in that they will not be at risk of violating "tied-house" laws and, therefore, be subject to facing possible fines.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(A).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do no apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facilities's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any,

likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the number of taps in a facility may not exceed by 10% the actual volume of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
Notice of Continuation December 26, 2001
32A-1-107
32A-1-119(5)(c)
32A-3-103(1)(a)
32A-4-103(1)(a)
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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
R81-1-22
Diplomatic Embassy Shipments and Purchases

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27029
FILED: 04/01/2004, 10:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Originally established by internal department policy, the provisions of this rule amendment are being proposed as an administrative rule to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: During the 2002 Winter Olympics it became necessary for the Department of Alcoholic Beverage Control (DABC) to established a policy by which foreign countries could obtain specific alcoholic beverages to be consumed in diplomatic functions involving their constituency and invited guests. This proposed rule amendment relocates into administrative rule the guidelines for the importation, special order, and/or purchase of specific alcoholic beverage products, exempt from state sales taxes, by the diplomatic missions of foreign countries. (The tax exempt status is a provision of the Vienna Conventions on Diplomatic and Consular Relations.)

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Since this proposed rule amendment will allow the diplomatic missions of foreign countries an exemption from paying Utah's state sales tax of 6.6% when purchasing alcoholic beverages for use in official diplomatic functions, the state will lose those revenues. If the foreign country opts to import the alcoholic beverages directly, they will be assessed a $1 per unit (bottle, can, or keg) handling fee, but no other state mark-ups. It is anticipated, however, that this rule will be implemented only rarely.

❖ LOCAL GOVERNMENTS: None--The proposed rule amendment establishes guidelines for the importation and sale of alcoholic beverages normally handled by the Department of Alcoholic Beverage Control and does not affect revenues or costs to local governments.

❖ OTHER PERSONS: The only other persons fiscally affected by this proposed rule amendment are the diplomatic missions of the foreign counties involved. Those persons would be exempt from paying state sales taxes or the usual state mark-up depending on how they choose to obtain the alcoholic beverages they will use at their private functions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If the diplomatic missions of foreign countries who obtain alcoholic beverages for use at their private functions choose to have their own products shipped into the state of Utah, they will be assessed a $1 per unit handling fee only. However, if they special order the product or choose products carried in state liquor stores, they will save the cost of state sales taxes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed rule amendment will have no fiscal impact on businesses. Alcoholic beverage manufacturers will receive the full payments for their products.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department's standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
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
R81-1-23
Sales Restrictions on Products of Limited Availability

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27030
FILED: 04/01/2004, 11:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Originally adopted as an internal department policy, this rule amendment is now proposed to conform to the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Some alcoholic beverages, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the Department of Alcoholic Beverage Control (DABC). This proposed rule establishes the authority and guidelines for the department to limit the distribution of those products to licensees, permittees, and the general public.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None. The alcoholic products involved in this proposed rule amendment will be purchased and sold by the state of Utah, and the state's costs and revenues will be unchanged regardless of who buys the products. The proposed rule only establishes guidelines for seeing that all residents in the state of Utah have an equal opportunity to enjoy the products that are available in limited quantities.
❖ LOCAL GOVERNMENTS: None--The purchase and sale of liquor in the state of Utah is handled exclusively by the Department of Alcoholic Beverage Control and does not involve local governments.
❖ OTHER PERSONS: Restricting the allocation of certain limited alcoholic beverage products may have a fiscal impact on some liquor licensees who would like to purchase these products for resale in their establishments. But, the department is of the opinion that limiting the allocation of these products to make them available to a broader customer base merits the limited allocation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed rule amendment involves no compliance costs to affected persons. It only establishes guidelines for the department to allocate the sales of certain limited alcoholic beverage product.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: From time to time a licensee will want to purchase most or all of a particular limited alcoholic beverage item. That licensee's business may be somewhat impacted by being able to buy only a certain allotment of that product. However, the DABC feels this inconvenience is justified by giving all of Utah's citizens the opportunity to enjoy their share of these limited items.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department's current and future stock levels, the department, as a public agency, may place restrictions on

their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
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
R81-2-1
Special Orders of Liquor by Public

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27031
FILED: 04/01/2004, 11:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Though many of the provisions of this rule were already effective, over time the department has established additional guidelines by internal department policy. The amendments to this rule are proposed to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Section R81-2-1 was written as a department rule several years ago. However, over the years changes have been made to how the public goes about placing special orders of alcoholic beverage products with the Department of Alcoholic Beverage Control (DABC). The requirements for placing special orders are much more specific now than when the rule was originally written, specifically in defining how the order form is filled out, how the product is delivered, and the conditions of purchasing the product from the manufacturer.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The DABC has always allowed persons and/or groups to order alcoholic beverage products that are not normally carried in the state. This rule is proposed to clarify the order and delivery process more definitively. Nothing in this process will affect a cost or savings to the state budget.
❖ LOCAL GOVERNMENTS: None--Since special orders of alcoholic beverages are handled only through the DABC, there is no fiscal impact on local governments.
❖ OTHER PERSONS: None--The proposed amendments to this rule are of a nature that define the process of placing special orders for alcoholic beverages. No part of this proposed amendment alters the prices charged for these products.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments to this rule are proposed for the purpose of better defining the order and delivery procedures when placing special order of alcoholic beverages. Since these procedures have been required by internal department policy for some time, amending the rule will not create additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment does not affect the price of alcoholic beverages, it only defines the procedures by which a person or group may place special orders for alcoholic beverage products. Businesses will experience no fiscal impact from this proposed rule amendment.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-1. Special Orders of Liquor by Public.

[~~A special order item is any item not listed in the department's product/price list. All state stores are required to process any request for special orders.~~](1) Purpose. A special order product is any product not listed on the department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Any state store may process special order requests.

(b) Any individual may place a special order at any state liquor store. Special orders may be placed [~~for~~]by groups of individuals[~~or~~], organizations, or retail licensees either at a state liquor store or with the purchasing division of the department[~~,~~]. A special order shall be processed as follows:

[~~(1)~~](i) A special order form must be filled out [~~on every special order item.~~]and signed by the customer for each special order product purchased. The state liquor store shall forward the form to the department's purchasing division.

[~~(2) Group special orders must be accompanied by a list of the state stores to which the special order item will be sent, and the name and telephone number of the individual who will purchase the special order item at that state store.~~

~~(3)~~](ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders[~~, but a deposit of twenty-five dollars is required on special orders of four or more cases~~].

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The department's special order buyer shall obtain a retail bottle price and call the customer and/or state liquor store for clearance to proceed with the order.

[~~(4)~~](viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

[~~(5) Special order requests must include the product name and distributor or shipper.~~](ix) Special orders may only be placed by customers. State stores may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

KEY: alcoholic beverages
[~~July 1, 2002~~]2004
Notice of Continuation November 16, 2001
32A-1-107
32A-1-301 to 32A-1-305

▼ ▼

Alcoholic Beverage Control, Administration
R81-2-2
Liquor Returns, Refunds and Exchanges

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27032
FILED: 04/01/2004, 11:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Though Section R81-2-2 became effective many years ago, the guidelines for accepting liquor returns, refunds and exchanges at state liquor stores have since been defined more extensively and have been implemented by internal department policy. This rule is proposed to conform with the Rulemaking Act of having these guidelines present in the department's administrative rules. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to this rule defines "unsaleable products" and "saleable products" and gives specific guidelines for the return, refund and exchange of alcoholic beverages at state liquor stores.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The guidelines in this proposed rule amendment for returning, refunding, and exchanging alcoholic beverages at state liquor stores have been in force for several years. These guidelines were implemented by internal department policy. Relocating the guidelines into the department's administrative rules will have no affect on how these items are handled and will not affect the state's budget.
❖ LOCAL GOVERNMENTS: None--The provisions of this proposed rule amendment establish guidelines for the return, refund and/or exchanged of liquor to state stores. Local governments will not be fiscally impacted by this rule amendment.
❖ OTHER PERSONS: None--The provisions of this proposed rule amendment establish guidelines for the return, refund and/or exchanged of liquor to state stores. Complying with these provisions will have no fiscal impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The only compliance cost for affected persons is the 10% restocking fee for the return of merchandise valued at more than $1,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since the provisions of this proposed rule have been enforced for many years by internal agency policy, there will be no additional fiscal impact on businesses that return or exchange alcoholic beverages as a result of relocating these provisions into the department's administrative rules.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-2. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is [~~defective, provided the customer returns the bottle with at least 1/2 of the contents in the bottle.~~]unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the store manager to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) All returned product must have the state stamp attached to each bottle.

(iv) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine [~~merchandise~~]will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.[

~~Wine purchased at any specialty wine store may not be exchanged or returned for refund.~~]

(b) Saleable Product. Store managers are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the store manager. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition with a state stamp attached to every bottle. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500 the store manager shall fill out a "Returned Merchandise Acknowledgment Receipt" (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

KEY: alcoholic beverages
[~~July 1, 2002~~|2004
Notice of Continuation November 16, 2001
32A-1-107
32A-1-301 to 32A-1-305

Alcoholic Beverage Control, Administration
R81-2-7
Minors on Premises

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27033
FILED: 04/01/2004, 12:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Though rules for minors being allowed on the premises of state liquor stores have been enforced by internal department policy for several years, these policies are now being proposed for administrative rules to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule defines the conditions under which a minor may be on the premises of a state liquor store.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This proposed rule only regulates the conditions under which a minor may be on the premises of a state liquor store. Since minors may not purchase alcoholic beverages, regulating their presence in state liquor stores does not affect the state budget.

❖ LOCAL GOVERNMENTS: None--This proposed rule regulates the conditions under which a minor may be on the premises of a state liquor store and does not affect local governments.

❖ OTHER PERSONS: None--This proposed rule regulates the conditions under which a minor may be on the premises of a state liquor store and does not fiscally affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There will be no compliance costs to affected persons, only restrictions for bringing their minor children into state liquor stores.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule only restricts the presence of minors on the premises of state liquor stores and has 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-7. Minors on Premises.

No person under the age of 21 years may enter a state liquor store unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the state liquor store.

KEY: alcoholic beverages
[~~July 1, 2002~~|2004
Notice of Continuation November 16, 2001
32A-1-107
32A-1-301 to 32A-1-305

Alcoholic Beverage Control, Administration
R81-2-8
Accepting Checks as Payment for Liquor

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27034
FILED: 04/01/2004, 12:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. The provisions in this proposed rule amendment were written in internal department policy but are now being proposed as an administrative rule to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule establishes guidelines for accepting checks and traveler's checks from individuals and licensees for the purchase of liquor in state liquor stores.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Department of Alcoholic Beverage Control (DABC) has been accepting checks from individuals and licensees for the purchase of liquor for several years. To this point, however, the guidelines for accepting checks have been written in internal agency policy. The primary cost to the state budget of regulating department check cashing practices is the cost of contracting the services of a check collection company who charges the department a percentage on the total dollar amount of all checks cashed to provide the service of verifying all checks and collecting on returned checks.
❖ LOCAL GOVERNMENTS: None--Liquor sales in the state of Utah are handled exclusively by state government. The acceptance of checks for the purchase of liquor has no effect on local governments.
❖ OTHER PERSONS: None--Persons who use a personal or business check to purchase liquor at state stores will experience no fiscal impact unless their check is returned unpaid. In that event, the person will be required to repay the department the amount of the check plus an additional service fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The persons affected by this proposed rule are customers who purchase liquor in state stores. The ability to pay for liquor with checks involves no compliance costs unless a check is returned unpaid. Then a service fee will be assessed to the person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The DABC has accepted checks from licensees and other businesses at the discretion of liquor store managers for many years. Establishing the department's long standing policies in administrative rule will have no fiscal impact on such 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-8. Accepting Checks as Payment for Liquor.

(1) A state liquor store may accept a check as payment for liquor from an individual customer only under the following conditions:
(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.
(b) The following must appear on the check:
(i) name (must be imprinted);
(ii) address (if post office box, the full address must be written in); and
(iii) telephone number (may be hand-written).
(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).
(d) The check must be made out for the exact amount of the purchase, and all checks from the individual may not exceed $400 per day.
(e) An acceptable form of identification is required for any check written over $50.00, and may be required at the discretion of the cashier or store manager for any check written under $50.00. Acceptable forms of identification include those listed in R81-2-4.
(2) A state liquor store may accept a check as payment for liquor from a licensee only under the following conditions:
(a) The check must be imprinted with the name of the licensee's business, its business address, and its telephone number.
(b) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).
(c) The check must be made out for the exact amount of the purchase.
(3) A state liquor store may accept a business or company check as payment for liquor only under the following conditions:
(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.
(b) The check must be imprinted with the name of the business or company, its business address, and its telephone number.

(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).
(d) The check must be made out for the exact amount of the purchase.
(e) Further identification is not required.
(f) The department may place a maximum limit on the total dollar amount in checks a business or company may tender to the department in a 24 hour period.
(4) A state liquor store may accept a traveler's check as payment for liquor under the following conditions:
(a) Traveler's checks shall be in "US Dollars".
(b) Each traveler's check shall have been previously signed by the holder of the check at the issuing bank or company. The check shall then be signed a second time in front of the DABC store employee that is handling the sale. The store employee shall compare the two signatures to verify that the signatures match, and shall otherwise examine the check to verify its validity.
(c) Traveler's checks shall be made out to the Department of Alcoholic Beverage Control or "D.A.B.C."
(d) When accepting a traveler's check for $50.00 or more, the store employee shall:
(i) call the issuing bank or company and receive an authorization, and authorization number; and
(ii) check the identification of the customer. Acceptable forms of identification include those listed in R81-2-4.
(e) On the upper, left hand corner of a traveler's check for $50.00 or more, the employee shall write:
(i) the authorization number from the issuing bank or company;
(ii) the type of identification used including expiration date and individual's identification number; and
(iii) the store employee's initials.

KEY: alcoholic beverages
[~~July 1, 2002~~]2004
Notice of Continuation November 16, 2001
32A-1-107
32A-1-301 to 32A-1-305

Alcoholic Beverage Control, Administration
R81-2-9
Accepting Credit Cards as Payment for Liquor

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27035
FILED: 04/01/2004, 12:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Credit cards have been accepted as legal tender in state liquor stores for several years and have been regulated by internal department policy. The relocating of these regulations into administrative rule is proposed to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment establishes by administrative rule the guidelines used by sales clerks in state liquor stores when accepting credit cards for the purchase of liquor.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Department of Alcoholic Beverage Control (DABC) has accepted credit cards as legal tender for the purchase of liquor for several years. When this practice was first established, there was a one-time cost for credit card reading equipment of approximately $5,500. Since then there have been nominal costs for maintenance of the equipment. Relocating the guidelines for accepting credit cards in administrative rule has not, in itself, affected the state budget.
❖ LOCAL GOVERNMENTS: None--Liquor sales in the state of Utah are handled by state government. The acceptance of credit cards in state liquor stores does not fiscally affect local governments.
❖ OTHER PERSONS: None--Liquor sales in the state of Utah are handled by state government. The acceptance of credit cards in state liquor stores does not fiscally affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The affected persons in this case include individuals and businesses that purchase liquor. There is no compliance cost to affected persons in connection with their use of credit cards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The concept of allowing businesses (excluding licensees) to use credit cards to purchase liquor has been accepted whole-heartedly in the state of Utah. To this point, credit card use has been regulated by internal agency policy. Relocating these regulations in the department's administrative rules will have no anticipated fiscal impact on these 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-9. Accepting Credit Cards as Payment for Liquor.

(1) Purpose. This rule explains the procedures to be followed by state liquor store employees in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) The owner of the credit card must furnish the cashier with their actual credit card. No sale may be based on the customer merely furnishing a credit card number, or another person's credit card, including that of their spouse.

(b) The cashier shall examine the security features on the card such as signature, account number, expiration date, and hologram before accepting the card.

(c) The card must be signed by the card holder.

(d) If for any reason the credit card cannot be scanned, the cashier shall hand-key the credit card number into the hypercom or cash register keyboard. If the transaction is approved, the cashier shall imprint a copy of the credit card, and have the card holder sign it.

(e) After the cashier scans or hand-keys a credit card, the credit card company may approve or reject the transaction. A rejection may indicate that the card has been stolen, the customer's account is over-drawn, the card has expired, or some other problem. The cashier may receive several messages from the credit card company.

(i) If the message is "decline" or "card not accepted", the cashier should return the card to the customer, suggest another form of payment, and suggest that the customer contact the issuer of the card.

(ii) If the message is "call" or "call hold", the store employee should hold the card and either phone the credit card company's voice authorization center for more information, or enter a "code 10" request. The voice authorization center may instruct that the card be confiscated if it can be done by peaceful means. The "code 10" request will result in the credit card company researching the status of the card and approving the transaction with a "yes" or rejecting the transaction with a "no" prompt. At no time should store employees put themselves at risk by confiscating a credit card. If the card is confiscated, the store employee should immediately destroy the card by cutting it in half lengthwise. The card should then be sent to the owner's bank with a completed LQ-55 form.

(f) Credit card receipts contain confidential information that must be safeguarded. Cashiers should not throw the receipts in the trash. State store managers and their employees should consult their regional manager concerning proper storage and disposal of receipts.

(g) Refunds, or exchanges of products of unequal value that were purchased with a credit card, shall be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.

(h) Licensee purchases may not be paid by credit card. Licensee purchases may be only in cash or by check.

KEY: alcoholic beverages
[~~July 1, 2002~~|2004
Notice of Continuation November 16, 2001
32A-1-107
32A-1-301 to 32A-1-305

▼ ▼

Alcoholic Beverage Control, Administration
R81-2-10
State Store Hours

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27036
FILED: 04/01/2004, 12:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. The operating hours of state liquor stores have been established by internal department policy in the past, however, this proposed rule amendment will relocate the store hours in administrative rule to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule establishes the operating hours of state liquor stores.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsection 32A-2-103(6)(e)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The operating hours of state liquor stores have been established for years. Relocating the operating hours in administrative rule will not affect the state's budget.

❖ LOCAL GOVERNMENTS: None--Liquor is handled in the state of Utah by state government. Establishing the operating hours of state stores in administrative rule will have no fiscal affect of local governments.

❖ OTHER PERSONS: None--Liquor stores throughout the state of Utah have varied operating hours depending on location and demographics. It is the intent of the Department of Alcoholic Beverage Control (DABC) to have liquor reasonably available to those who choose to purchase it. Establishing the operating hours in administrative rule will not fiscally effect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Since this proposed rule merely establishes in administrative rule the operating hours of state liquor stores, there is no compliance cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The DABC carefully assesses the needs of the buying public when locating a state liquor store and then determines the operating hours relative to the needs of the customers who will likely shop at that location. It is the department's belief that these operating hours reasonably satisfy the needs of the individual customer as well as any businesses that purchase alcoholic beverages.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-10. State Store Hours.

(1) Sale or delivery of liquor may not be made on the premises of any state store, nor may any state store be kept open for the sale of liquor:

(a) on any day prohibited by 32A-2-103(6);

(b) on any other day before 10 a.m. or later than 10 p.m.

(2) Subject to the restrictions of subsection (1), the department may adjust the sales hours for each state store based on such factors as the locality of the store, tourist traffic, demographics, population to be served, and customer demand in the area.

KEY: alcoholic beverages
[~~July 1, 2002~~|2004
Notice of Continuation November 16, 2001
32A-1-107
32A-1-301 to 32A-1-305

▼ ▼

Alcoholic Beverage Control, Administration
R81-2-11
Industry Members in State Stores

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27037
FILED: 04/01/2004, 14:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. The Department of Alcoholic Beverage Control (DABC) has regulated the activities of industry members in state stores for many years by internal department policy. This rule amendment is being proposed to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment places in administrative rule the regulations by which an industry member may conduct business in state liquor stores. "Industry member" is defined as an alcoholic beverage manufacturer, producer, supplier, importer, wholesaler, bottler, or any of its affiliates, subsidiaries, officers, directors, partners, agents, employees, or representatives.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This proposed rule amendment will have no fiscal impact on the state budget. It only places in administrative rule the guidelines by which liquor industry members may conduct business in the storage area and office of state liquor stores.
❖ LOCAL GOVERNMENTS: None--Liquor in the state of Utah is handled exclusively by the state government. Limiting the activities of industry members in state liquor stores will have no fiscal impact on local governments.
❖ OTHER PERSONS: None--This proposed rule amendment will not fiscally impact other persons. The intent of the proposed amendment is to place in administrative rule the restrictions imposed upon liquor industry members who want to be involved in the daily operations of state liquor stores.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The limits imposed on liquor industry representatives who choose to be involved in the daily operations of state liquor stores have been in place for many years. Since relocating these limits into DABC's administrative rules will not affect the activities of these industry members, there will be no additional compliance costs involved.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The passage of this proposed rule will have no fiscal impact on businesses. For years, industry members have been allowed into the storage areas

and offices of state liquor stores for the purpose of stocking their products and discussing product characteristics with store managers and staff. Nothing will change except that the rules for their involvement will now be in administrative rule and not just internal department policy.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-11. Industry Members in State Stores.

An industry member, as defined in 32A-12-601, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

KEY: alcoholic beverages
[~~July 1, 2002~~]2004
Notice of Continuation November 16, 2001
32A-1-107
32A-1-301 to 32A-1-305

Alcoholic Beverage Control, Administration

R81-3-5

Special Orders of Liquor by Public

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27038
FILED: 04/01/2004, 14:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act (Act) was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Though this rule was in effect prior to this amendment to the Act, many of the details of the special orders process were written as internal department policies. The amendments to this rule are proposed to conform with the Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Section R81-3-5 was written as a department rule several years ago. However, over the years changes have been made to how the public goes about placing special orders for alcoholic beverage products with state-contracted package agencies. The requirements for placing special orders are much more specific now than when the rule was originally written, specifically in defining how the order form is filled out, how the product is delivered, and the conditions of purchasing the product from the manufacturer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The Department of Alcoholic Beverage Control (DABC) has always allowed persons and/or groups to order alcoholic beverage products that are not normally carried in the state. This rule amendment is proposed to clarify the order and delivery process more definitively. Nothing in this process will effect a cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: None--Since special orders of alcoholic beverages are handled exclusively through the DABC and its contracted package agencies, there is no fiscal impact on local governments.

❖ OTHER PERSONS: None--The proposed amendments to this rule are of a nature that define the process of placing special alcoholic beverage orders. No part of this proposed amendment alters the prices charged for these products or requires an additional cost to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments to this rule are proposed for the purpose of better defining the ordering and delivery procedures when placing a special order for alcoholic beverages. Since these procedures have been required by internal agency policy for some time, amending the rule will not create additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment does not affect the price of alcoholic beverages, it only defines the procedures by which a person or group may place a special order for alcoholic beverage products from a contracted package agency. Businesses will experience no fiscal impact from this proposed rule amendment.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-5. Special Orders of Liquor by Public.

[~~A special order item is any item not listed in the department's product/price list. Only type 3 package agencies may process special order requests.~~](1) Purpose. A special order product is any product not listed on the department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Only type 2 and 3 package agencies may process special order requests.

(b) Any individual may place a special order at any type 2 or 3 package agency. Special orders may be placed [~~for~~]by groups of individuals[~~-or~~], organizations, or retail licensees either at a type 2 or 3 package agency or with the purchasing division of the department[,]. A special order shall be processed as follows:

[~~(1)~~](i) A special order form must be filled out [~~on every special order item.~~]and signed by the customer for each special order product purchased. The package agency shall forward the form to the department's purchasing division.

[~~(2)~~](ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders[~~, but a deposit of twenty-five dollars is required on special orders of four or more cases~~].

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The department's special order buyer shall obtain a retail bottle price and call the customer and/or package agent for clearance to proceed with the order.

[~~(3)~~](viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

[~~(4) Special order requests must include the product name and distributor or shipper.~~](ix) Special orders may only be placed by customers. Package agencies may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
Notice of Continuation December 18, 2001
32A-1-107

Alcoholic Beverage Control, Administration
R81-3-6
Liquor Returns, Refunds and Exchanges

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27039
FILED: 04/01/2004, 14:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act (Act) was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Though Section R81-3-6 became effective many years ago, the guidelines for accepting liquor returns, refunds, and exchanges at state contracted package agencies have since been defined more extensively and have been implemented by internal department policy. This rule is proposed to conform with this amendment to the Act of having these

guidelines present in the department's administrative rules. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment to this rule defines "unsaleable products" and "saleable" products and gives specific guidelines for the return, refund and exchange of alcoholic beverages to package agencies.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The guidelines in this proposed rule amendment for returning, refunding, and exchanging alcoholic beverages to package agencies contracted through the Department of Alcoholic Beverage Control (DABC) have been in effect for several years. These guidelines were implemented by internal department policy. Relocating the guidelines in the department's administrative rules will have no affect on how these items are handled and will not effect the state's budget.

❖ LOCAL GOVERNMENTS: None--Liquor sales and returns are handled exclusively by state government and do not affect local governments.

❖ OTHER PERSONS: None--There will be no cost because regulated individuals must still follow the same requirements as before, only now the requirements are in rule rather than policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no additional compliance costs because these requirements were already imposed by policy. Now they will be in rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since the provisions of this proposed rule have been enforced for many years though internal agency policy, there will be no additional fiscal impact on businesses as a result of relocating these policies in the department's administrative rules.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-6. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange, liquor merchandise that is [~~defective, provided the customer returns the bottle with at least 1/2 of the contents in the bottle.~~]unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) All returned product must have the state stamp attached to each bottle.

(iv) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine [~~merchandise~~]will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.[~~ Wine purchased at any specialty wine store may not be exchanged or returned for refund.~~]

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(b) Saleable Product. Package agents are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the package agent.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition with a state stamp attached to every bottle. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the package agent has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500 the package agent shall fill out a "Returned Merchandise Acknowledgment Receipt" (LQ-45), and submit a copy to the office.

A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

KEY: alcoholic beverages
[~~August 1, 2003~~|2004
Notice of Continuation December 18, 2001
32A-1-107

▼ ▼

Alcoholic Beverage Control, Administration
R81-3-14
Type 5 Package Agencies

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27040
FILED: 04/01/2004, 14:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. Most regulations for type 5 package agencies have been enforced by internal department policies in the past. This rule amendment is proposed to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: When Section R81-3-14 was originally written, the type 5 package agency was a new concept. At that time Section R81-3-14 provided little more than a definition. Over time, operational questions arose and it became apparent that guidelines needed to be in place. These guidelines were written and have been enforced through internal agency policy. Though the guidelines have been in effect for several years, the Department of Alcoholic Beverage Control (DABC) is now proposing to place them in administrative rule to meet the requirements enacted by the amendments to the Rulemaking Act.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This proposed rule amendment moves the guidelines for operating a type 5 package agency from agency policy to administrative rule. These guidelines have been enforced for several years and basically regulate how these agencies store, sell, and distribute the alcoholic beverage products they produce at their own location. Amending this rule will have no fiscal impact on the state budget.

❖ LOCAL GOVERNMENTS: None--Local governments are not involved in regulating type 5 package agencies, therefore, amending this rule will have no fiscal impact on local governments.

❖ OTHER PERSONS: None--This proposed rule amendment regulates how liquor is stored, sold, and distributed in type 5 package agencies. These regulations have been enforced by department policy for several years. Passage of these amendments will affect no additional cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This proposed rule amendment regulates how type 5 package agencies may store, sell, and distribute the alcoholic beverage products they produce at their own location. Since these regulations have been enforced by internal department policy for a number of years, the passage of these amendments will add no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule primarily regulates how liquor is stored, sold and distributed in type 5 package agencies. Since a type 5 agency is permitted to sell only its own product, most of those purchasing these products will be individuals, not businesses. Therefore, passage of this proposed rule amendment should have little or 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-14. Type 5 Package Agencies.

(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery to sell at its winery location the packaged wine product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located on the winery premises at a location approved by the commission.

(b) [~~It~~]The package agency may only sell products produced at the winery, and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery and sold in the type 5 package agency need not be shipped from the winery to the department warehouse and then back to the package agency. [~~However, the department shall establish, by written policy, any requirements for inventory and sales accounting, record keeping, state labeling, payment of taxes and mark up, etc. of the product.~~]The bottles for sale may be moved directly from the winery storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every licensee purchase.

(d) Direct deliveries to licensees are prohibited. Wines must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with 32A-3-106(10).

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
Notice of Continuation December 18, 2001
32A-1-107

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Alcoholic Beverage Control, Administration
R81-3-16
Minors on Premises

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27041
FILED: 04/01/2004, 14:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. In the past, the Department of Alcoholic Beverage Control (DABC) has regulated the presence of minors in package agencies by internal department policy. This rule amendment is being proposed to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment will place in administrative rule the guidelines by which a minor may be on the premises of a contracted package agency.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Minors have always been allowed to a limited degree on the premises of liquor package agencies. This proposed rule amendment places the guidelines for this practice into administrative rule and makes these guidelines enforceable. Since minors are not allowed to purchase alcoholic beverages, limiting their presence on the premises of a package agency will have no fiscal impact on the state budget.

❖ LOCAL GOVERNMENTS: None--Contracted package agencies are regulated by the DABC and state government. Therefore, the passage of this proposed rule amendment will have no fiscal impact on local governments.

❖ OTHER PERSONS: None--Minors are not allowed to purchase liquor. Therefore, regulating their limited presence on the premises of a package agency will not fiscally impact other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Continuing to regulate the presence of minors on the premises will add no additional compliance costs to package agencies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Supervised minors have always been allowed on the premises of package agencies. Relocating the restrictions addressing this practice from internal department policy to administrative rules will have 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-16. Minors on Premises.

No person under the age of 21 years may enter a package agency unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the package agency.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
Notice of Continuation December 18, 2001
32A-1-107

▼ ▼

Alcoholic Beverage Control, Administration
R81-3-17
Consignment Inventory Package Agencies

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27042
FILED: 04/01/2004, 15:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. These rule amendments are proposed to comply with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment establishes in administrative rule the guidelines and procedures to be followed by consignment package agencies when purchasing liquor from the Department of Alcoholic Beverage Control (DABC) to replenish their inventories.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Consignment package agencies have been established throughout the state of Utah for many years. Procedures for ordering and paying for replenishment shipments of liquor from the DABC warehouse have been in place in internal department policy from the beginning. The act of relocating these procedures into administrative rule will have no effect on how the procedures are enforced and no fiscal effect on state budget.
❖ LOCAL GOVERNMENTS: None--Liquor sold in the state of Utah is handled exclusively through the DABC and state government. Liquor purchase and payment procedures for consignment package agencies have no fiscal effect on local government.
❖ OTHER PERSONS: None--The procedures by which consignment package agencies purchase and pay for liquor from the DABC warehouse have been enforced by internal department policy for many years. Relocating these policies into administrative rules will have no fiscal effect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The DABC's purchase, payment, and record keeping requirements for the replenishment of liquor in consignment package agencies have been established for many years. The proposed amendments to this rule will not alter the way these package agencies comply with these requirements, therefore, there will be no additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Utah is a control state, therefore, all packaged liquor sales are made in either state stores or state contracted package agencies. Other businesses in the state are not directly affected by the internal accounting practices agreed to between state government and the package agencies with whom they contract.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-17. Consignment Inventory Package Agencies.

(1) Purpose. At the discretion of the department, liquor may be provided by the department to a Type 2 and Type 3 package agency for sale on consignment pursuant to 32A-3-106(2)(b). This rule provides the procedures for such consignment sales.

(2) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the department's regional manager assigned to the package agency.

(ii) The consignment inventory amount shall be posted to the department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, authorization, or payment of money. A copy of the transfer, adjusting authorization, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the department's contract with the package agency.

(b) Payments.

(i) After receipt of a shipment of merchandise, the package agent shall submit a check to the department within 30 days of the authorization/transfer date.

(ii) The check shall be annotated with the authorization, transfer and credit memo numbers to which it applies as follows: Authorization(s) + or - transfers - credit memos = check.

(iii) All delivery discrepancies shall be resolved immediately by contacting the department's warehouse shipping manager. Payment shall be made on all authorizations/transfers by their due date whether or not any discrepancies have been resolved.

(iv) Any returned checks to the department from a package agent is grounds to require the package agent to provide a certified check to pay for future shipments.

(v) If a check for an authorization is not received by the department within 30 days of its due date, the department may assess the legal rate of interest on the amount owed, or may terminate the contract with the package agent and close the package agency.

(c) Transfers.

(i) Transfers (+ or -) shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the department on the next check due to the department.

(iii) Transfer out will subtract from the amount owed to the department on the next check due to the department.

(d) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The regional manager shall audit the package agency at least once every six months.

(iii) The package agency is subject to a department audit at any time.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
Notice of Continuation December 18, 2001
32A-1-107

Alcoholic Beverage Control, Administration
R81-3-18
Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27043
FILED: 04/01/2004, 15:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. This rule amendment is being proposed to conform to the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: In 1990, the legislature banned the sale of liquor in containers smaller than 200 ml. However, the legislature gave the Alcoholic Beverage Control (ABC) Commission the authority to allow smaller bottles at

their discretion and under limited circumstances. Several years ago, the ABC Commission made the decision to allow mini-bottles of liquor and 187 ml bottles of wine to be sold as part of a hotel or resort's room service in their type 4 package agencies. This proposed rule establishes in administrative rule the guidelines by which a hotel or resort with a type 4 package agency may purchase and resell liquor mini-bottles and 187 ml wine bottles.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This proposed rule amendment merely establishes the guidelines by which a type 4 package agency may sell mini-bottles of liquor or wine in 187 ml containers in room service. The passage of this rule amendment will add no cost or savings to the state budget.
❖ LOCAL GOVERNMENTS: None--Liquor in Utah is handled by the Department of Alcoholic Beverage Control (DABC) and state government. Local governments are not affected fiscally by the sale of mini-bottles and 187 ml wine bottles by type 4 package agencies.
❖ OTHER PERSONS: None--The regulations in this proposed rule have been enforced by policy for several years. The only difference is that the regulations will now be enforced by administrative rule instead of policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Because these regulations have been in force for several years by department policy, relocating them in administrative rule will create no further compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because only individuals who rent sleeping rooms in hotels and resorts may order mini-bottles and 187 ml wine bottles through room service, no businesses will be directly affected by this proposed rule amendment. The possible exception to this statement is that alcoholic beverage manufacturers and suppliers may experience a small increase in revenues from the sale of these items.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-18. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service sales by Type 4 package agencies located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots, and all sales are final.

(c) If the hotel/resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing room service to guests in sleeping rooms in the hotel/resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the department to terminate its contract with the Type 4 package agency.

KEY: alcoholic beverages
[~~August 1, 2003~~|2004
Notice of Continuation December 18, 2001
32A-1-107

Alcoholic Beverage Control, Administration
R81-3-19
Credit Cards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27044
FILED: 04/01/2004, 15:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. The amendments to this rule are proposed to conform to the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment establishes by administrative rule the guidelines used by sales clerks in contracted package agencies when accepting credit cards for the purchase of liquor.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Department of Alcoholic Beverage Control (DABC) has allowed package agencies to accept credit cards as legal tender for several years. When this practice was first established by internal department policy, there was a one-time cost to DABC's budget for credit card reading equipment of approximately $15,000. Since then there have been nominal costs for maintenance of that equipment. It is anticipated that these maintenance costs will be on-going. Otherwise, there are no other anticipated costs or savings to the state budget.

❖ LOCAL GOVERNMENTS: None--Liquor sales in the state of Utah are handled by state government. The acceptance of credit cards in package agencies does not fiscally affect local governments.

❖ OTHER PERSONS: None--Liquor sales in the state of Utah are handled by state government. The acceptance of credit cards in package agencies does not fiscally affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The affected persons in this case include individuals and businesses that purchase liquor. Their ability to use credit cards for those purchases, does not fiscally impact these persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The concept of allowing businesses (excluding licensees) to use credit cards to purchase liquor has been accepted whole-heartedly in the state of Utah. Relocating the guidelines for credit card sales into the department's administrative rules will have no anticipated fiscal impact on these 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-19 Credit Cards.

(1) Purpose. This rule explains the procedures to be followed by consignment package agents in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) Licensee purchases may not be paid by credit card. The department will accept only checks and cash from licensees.

(b) Refunds, or exchanges of products of unequal value, will be handled by crediting the customer=s credit card account. The cash register must be balanced by doing a return at the register.

(c) The cashier shall examine the security features of the card such as signatures, account numbers, expiration date, hologram, etc., before accepting any card.

(d) No sale may be made without the credit card. Merely having the credit card number available is not acceptable.

(e) All credit cards must be signed by the card holder.

(f) Customers may not use another person's credit card, including their spouse's card.

(g) Credit card receipts contain confidential information that needs to be safeguarded. Cashiers should not throw them in the trash. Consignment package agents and their employees should consult their regional manager concerning proper storage and disposal of such receipts.

(h) If for any reason the credit card cannot be scanned, the credit card number should be hand keyed into the hypercom or keyboard. An imprinted copy of the credit card must then be made. The imprinted copy must be signed by the card holder.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
Notice of Continuation December 18, 2001
32A-1-107

Alcoholic Beverage Control, Administration
R81-4D-13
On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27045
FILED: 04/01/2004, 15:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. This rule amendment is being proposed to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: In 1990, the Legislature banned the sale of liquor in containers smaller than 200 ml. However, the Legislature gave the Alcoholic Beverage Control (ABC) Commission the authority to approve the use of "mini-bottles" and 187 ml wine containers at their discretion and under limited circumstances. In 2003, the Legislature created a new liquor license type, the On-Premise Banquet License, to allow hotels, resorts, sports arenas and convention centers to store, sell, and allow consumption of liquor in connection with that entity's banquet or room service activities. This proposed rule establishes guidelines for the use of mini-bottles and 187 ml wine bottles as part of the room service facilities in hotels and resorts.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This proposed rule amendment merely establishes the guidelines by which a hotel/resort may use mini-bottles and 187 ml wine bottles in connection with room service. The passage of this rule amendment will add no cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: None--Liquor sales in the state of Utah are handled exclusively by state government. Local governments are not fiscally affected by the sale of mini-bottles and 187 ml wine bottles by room service facilities in hotels and resorts.

❖ OTHER PERSONS: The "other persons" who are affected by this proposed rule amendment are the aggregate of those individuals who rent sleeping rooms in hotels and resorts and enjoy room service in those facilities. The ability to purchase liquor or wine in single-serving containers rather than having to buy a full-size container is appealing from a monetary standpoint. In this event, there could be considerable savings if a person chooses to have only one drink.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs to hotels and resorts are minimal and will be primarily realized in the necessity of having to place special orders for mini-bottles and 187 ml wine bottles. These facilities will also be required to include single-serving containers on their room service price lists and maintain inventory and sales records.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Room service in hotels and resorts is available for the convenience of individuals who rent sleeping rooms. It is unlawful for these facilities to use mini-bottles and 187 ml wine portions in connection with catered events contracted with large groups and businesses. Therefore, the passage of this proposed rule amendment will have no fiscal impact on businesses. The only fiscal impact would be in the form of possible revenue increases enjoyed by manufacturers that supply liquor to the state of Utah.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
32A-1-107
32A-4 Part 4

Alcoholic Beverage Control, Administration
R81-6-6
Religious Wine Permits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27046
FILED: 04/01/2004, 15:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. This rule amendment is proposed to conform with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Title 32A, Chapter 6, Part 5, provides for churches to hold a special use permit that allows them to buy wine at a reduced price when the wine will be used as part of the church's religious services. This proposed rule amendment establishes guidelines for the pricing, ordering and distribution of these wines.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The pricing structure for holders of a religious wine permit has been in effect for several years by internal department policy. Therefore, the passage of this proposed rule amendment will not alter costs to the state budget, only define them in administrative rule. The proposed rule amendment establishes in rule a price of "cost + shipping" for religious wines to permit holders. This means the usual 96.742% markup (which includes all taxes) will not be charged on these items and will, therefore, not be a revenue to the state of Utah.
❖ LOCAL GOVERNMENTS: None--Packaged liquor sales in Utah are handled exclusively by state government. The sale of wine for church services will not fiscally affect local governments.
❖ OTHER PERSONS: Churches that hold a permit to purchase wine for church services have been exempt from paying the state markup on wine for many years. The passage of this proposed rule amendment will not alter these savings, but will establish this pricing schedule in administrative rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The guidelines for the purchase of religious wines by permit holders have been written in internal department policy for many years. The passage of this proposed rule amendment will not alter the guidelines, only move them to administrative rule. No additional compliance costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment only affects religious wine permit holders and should have 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-6. Special Use Permits.
R81-6-6. Religious Wine Permits.

(1) Purpose. This rule outlines the procedures for a religious wine permit holder to purchase wine for religious purposes, and the procedures department personnel shall follow to process the purchase.

(2) Application of Rule.

(a) The permit holder may purchase any generally listed wine directly off of the shelf of any state store or package agency at a charge of cost plus freight. The cashier shall first verify that the purchasing religious organization is a holder of a permit on file in the department's licensee/permittee data base. The cashier shall determine the cost plus freight price of the wine. The wine may be purchased only with cash or a check belonging to the religious organization, and not with an individual's personal check or credit card. Checks shall be deposited in the ordinary course of business with other checks. If wines are purchased by the case, the cases must be opened and the individual bottles marked with the state label.

(b) The permit holder may order wine for religious purposes directly from the winery and have the winery ship the wine prepaid at a charge of cost plus freight to the department's central administrative warehouse. The warehouse shall deliver the wine to the state store or package agency nearest to the permit holder's church. The state store or package agency shall open any cases and mark individual bottles with the state label. The state store or package agency shall notify the permit holder when the product is available for pick-up.

(c) The permit holder may place a special order for wines not generally listed by the department only if the winery will not sell directly to the permit holder. Special orders may be placed only with the special order clerk at the department's administrative office. No special orders may be placed with a state store or package agency. The special order clerk shall verify that the purchasing religious organization is on file in the department's licensee/permittee data base, place the order, assign it a special order code number, assess a charge of cost plus freight, and have the wine delivered to the state store or package agency nearest to the permit holder's church. The state store or package agency shall notify the permit holder when the product is available for pick-up. All procedures for processing the purchase that are outlined in (a) above shall be followed by the state store or package agency to complete the sale.

KEY: alcoholic beverages
[~~August 1, 2003~~]2004
Notice of Continuation December 18, 2001
32A-1-107

Alcoholic Beverage Control, Administration
R81-8-2
Out of State Business

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27047
FILED: 04/01/2004, 15:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. This rule amendment is proposed to comply with the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment establishes guidelines by which a brewer outside the state of Utah may receive and maintain a "certificate of approval" which allows that brewer to sell beer with an alcohol content of less than 4% alcohol by volume to licensed beer wholesalers in this state. These regulations were previously written in internal department policy.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This proposed rule amendment sets guidelines for an out-of-state brewer to receive a certificate of approval to sell their beer to wholesalers in the state of Utah. These guidelines were previously established in internal agency policy, and relocating them in administrative rule will not effect a cost of savings to the state budget.
❖ LOCAL GOVERNMENTS: None--Local governments may pass ordinances that regulate the sale of beer (less than 4% alcohol by volume) in the state of Utah. However, these proposed amendments to Section R81-8-2 are separate from local ordinances and, therefore, do not fiscally affect local governments.
❖ OTHER PERSONS: None--Since these regulations have been enforced by internal department policy for man years, relocating them in administrative rule will have no fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These regulations have been in internal department policy for many years. Relocating them in administrative rule will involve no further compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The guidelines of this proposed rule amendment have been established in internal agency policy for several years. Relocating these guidelines in administrative rules will have no anticipated 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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-8. Manufacturers (Distillery, Winery, Brewery).
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(2).~~](1) Purpose. Pursuant to 32A-8-101(4), brewers located outside the state must obtain a certificate of approval from the department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state. These certificates must be renewed annually.

In addition to issuing certificates of approval to brewers who actually produce the beer, the department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.

This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.

(2) Application of Rule.

(a) A certificate of approval to sell or deliver beer in this state under 32A-8-101(4) may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.

(b) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company. However, the certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the certificate holder.

(c) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery's brand name is deemed to be a "brewery" for purposes of 32A-8-101(4), and may be issued a certificate of approval. However, the distillery or winery is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

KEY: alcoholic beverages
[~~April 29, 2002~~]2004
Notice of Continuation December 18, 2001
32A-1-107

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Alcoholic Beverage Control, Administration
R81-8-3
Winery Tasting Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27048
FILED: 04/01/2004, 15:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Administrative Rulemaking Act was amended in 2003 to provide that an agency's written statements that restrict the legal rights of a public class of persons or another agency must be in rule and go through the rulemaking process. This rule amendment is proposed to conform to the Rulemaking Act. (DAR NOTE: The Utah Administrative Rulemaking Act was amended by S.B. 30 (2003), which is found at UT L 2003 Ch 197, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Wineries licensed in the state of Utah are permitted to have wine tasting facilities on their premises. This proposed rule amendment establishes operational guidelines for these facilities.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Wineries within the state of Utah have been permitted to conduct tastings of their products on the winery premises for many years. The guidelines for these tasting rooms have been written in internal department policy. Relocating these guidelines in administrative rule will not create a cost or savings to the state budget.
❖ LOCAL GOVERNMENTS: None--Wineries in the state of Utah are regulated by state government. Establishing guidelines for operating the product tasting facilities at these wineries will not affect local governments.
❖ OTHER PERSONS: None--Relocating these regulations from internal department policy to administrative rule will impose no costs to the persons affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There will be no compliance costs because regulated individuals must still follow the same requirements, only now the requirements are in administrative rule rather than internal department policy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact on businesses because, besides the winery itself, no other businesses are involved in the operation of the product tasting rooms at wineries in the state of Utah.

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 smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-8. Manufacturers (Distillery, Winery, Brewery).
R81-8-3. Winery Tasting Facilities.

(1) Purpose. Pursuant to 32A-8-201(4), a licensed winery may allow the consumption of samples of wine on the premises of the winery as long as food is available. This rule establishes guidelines for tasting facilities on winery premises.

(2) Application of Rule. A winery licensee may operate on its manufacturing premises a tasting facility allowing the consumption of wine samples at a site approved by the department under the following conditions:

(a) The tasting area must be located on the winery premises.

(b) Food must be available in the tasting area.

(c) Records required by the department shall be kept current and available to the department for auditing purposes. This includes a daily record of all products and quantities tasted.

(d) The storage area floor plan for the tasting facility must be approved by the department and may not be relocated without department approval.

(e) Wine samples may not exceed two ounces per glass.

(f) Samples may not be removed from the winery premises.

(g) Sample tastings may not be conducted off of the winery premises.

KEY: alcoholic beverages
[~~April 29, 2002~~]2004
Notice of Continuation December 18, 2001
32A-1-107

▼ ▼

Commerce, Occupational and Professional Licensing

R156-26a-303b

Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27019
FILED: 03/29/2004, 16:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is deleting the maximum portion of continuing education that can be obtained by self study. Since the implementation of amendments to this rule became effective in January 2004, the Utah Association of Certified Public Accountants (UACPA) has received a tremendous amount of comments regarding this limitation. Many comments stated they believe the self-study courses are just as effective if not more effective than seminar type courses, because a test is required at the end of the course. Testing is not required for live seminars. The self-study courses are important to some certified public accountants (CPAs) because of the convenience to schedule and can be completed without taking trips to seminar sites. This is particularly important to CPAs in more rural areas.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-26A-303b(3)(m)(iii), the maximum credit for self-study learning activities is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-26a-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs, of approximately $75, to reprint the rule once the proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget. There may be some indirect savings with respect to continuing professional education costs for CPAs employed by the state if the state pays for some of the continuing professional education costs for those CPAs.

❖ LOCAL GOVERNMENTS: The proposed amendment does not apply to local governments. However, there may be some indirect savings with respect to continuing professional education costs for CPAs employed by local governments if the local government pays for some of the continuing professional education costs for those CPAs.

❖ OTHER PERSONS: Licensed CPAs: As a result of the proposed amendment, there will be no cost increase. It is difficult to estimate the amount of savings as a result of the proposed amendment. The costs of continuing professional education courses are not likely to be much different between a self-study course and a live seminar course but because of convenience of location, there would likely be savings on indirect costs of attending a seminar such as gas, hotel and time off if courses are offered out of town. The Division is unable to determine an aggregate amount of potential savings due to such a wide range of courses available and the costs for those courses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed CPAs: As a result of the proposed amendment, there will be no cost increase. It is difficult to estimate the amount of savings as a result of the proposed amendment. The costs of continuing professional education courses are not likely to be much different between a self-study course and a live seminar course but because of convenience of location, there would likely be savings on indirect costs of attending a seminar such as gas, hotel, and time off if courses are offered out of town.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change removes the provision that placed a cap on the allowable number of self-study continuing professional education (CPE) courses. The amendment resulted from comments received from the regulated industry. There appears to be no fiscal impact to businesses as a result of this rule change, although there may be savings to regulated CPAs. Klarice A. Bachman, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/05/2004 at 1:00 PM, 160 East 300 South, Conference Room 428 (Fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rules.
R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).

(1) All CPAs are required to maintain current knowledge, skills, and abilities in all areas in which they provide services in order to provide services in a competent manner. To maintain or to obtain the knowledge, skills and abilities to competently provide services, a CPA may be required to obtain CPE above and beyond the 80 minimum CPE credits specified in Section 58-26a-304.

(a) The following standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills and abilities necessary to competently provide services and to enable to the CPA to provide evidence of meeting the minimum CPE requirements specified under these rules.

(2) General Standards for CPAs.

(a) Standard No. 1. All CPAs must participate in CPE learning activities that maintain and/or improve their professional competence. This CPE must include a minimum of 80 hours of CPE in each two-year period as specified in Subsection 58-26a-304(1).

(i) The term "must", as used in these standards, means departure from those specific standards is not permitted. The term "should", as used in these standards, means that CPAs and CPE program sponsors are expected to follow such standards as written and are required to justify any departures from such standards when unusual circumstances warrant such departures.

(ii) Selection of CPE learning activities should be a thoughtful, reflective process addressing the individual CPA's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(iii) A CPA's field of employment does not limit the need for CPE. CPAs performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(iv) Acceptable CPE subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence. Such subjects may include, but are not limited to: accounting and auditing, taxation, management advisory services, information technology, communication arts, mathematics, statistics, probability and quantitative analysis, economics, business law and litigation support, functional fields of business such as finance, production, marketing, personnel relations, development and management, business management and organizations, social environment of business, and specialized areas of industry such as film industry, real estate, or farming.

(v) To help guide their professional development, CPAs may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development.

(A) A learning plan means a structured process that helps guide CPAs in their professional development. A learning plan is used to evaluate and document learning and professional competence development. A learning plan should be reviewed regularly and modified as a CPA's professional competence needs change. A learning plan should include:

(I) a self-assessment of the gap between current and needed knowledge, skills, and abilities;

(II) a set of learning objectives arising from this assessment; and

(III) learning activities to be undertaken to fulfill the learning plan.

(b) Standard No 2. CPAs should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation (Nos. 8 - 11) and Standard for CPE Program Reporting No. 17.

(i) In addition to minimum CPE requirements specified in these rules, CPAs are responsible for compliance with all applicable CPE requirements, rules, and regulations of other state licensing bodies, other governmental entities and other professional organizations or bodies who have standard setting authority. CPAs should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(ii) Periodically, CPAs may participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If CPAs propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to the Division, other state licensing bodies, and/or all other professional organizations or bodies showing that the learning activity is equivalent to one which meets all these or other applicable Standards.

(c) Standard No. 3. CPAs are responsible for accurate reporting of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including: name and contact information of CPE program sponsor, title and description of content, date of program, location and number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(i) Although CPAs are required to document a minimum level of CPE hours, through periodic reporting of CPE, the objective of CPE must always be maintenance/enhancement of professional competence, not just attainment of minimum credits.

(ii) Compliance with regulatory and other requirements mandates that CPAs keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements for longer retention, a CPA must retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(iii) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer or publisher.

(d) Standard No. 4. CPAs who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(i) CPAs may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(ii) In order to qualify as CPE, an Internet-based program must qualify as a group program as provided in Subsection R156-26a-303b(3)(b)(i) or as a self-study program as provided in Subsection R156-26a-303b(3)(g).

(e) Standard No. 5. CPAs may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(I) all the requirements of the independent study as outlined in the learning contract are met;

(II) the CPE program sponsor reviews and signs the participant's report;

(III) the CPE program sponsor reports to the participant the actual credits earned; and

(IV) the CPE program sponsor provides the participant with contact information.

(ii) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(iii) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(iv) Complete the program of independent study in 15 weeks or less.

(3) Standards for CPE Program Sponsors (Standard 1), Standards for CPE Program Development (Standards 2-7), Standards for CPE Program Presentation (Standards 8-11), Standards for Program Measurement (Standards 12-16), and Standards for CPE Program Reporting (Standards 17-18). "CPE sponsor", as used herein, means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term "CPE program sponsor" may include associations of CPAs, whether formal or informal, as well as employers who offer in-house programs.

(a) Standard No. 1. CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(i) In addition to the minimum requirements under these rules, CPE program sponsors may have to meet specific CPE requirements of other state licensing bodies, other governmental entities, and/or other professional organizations or bodies. CPE program sponsors should contact the appropriate entity to determine requirements.

(b) Standard No. 2. Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities.

(i) Learning activities, meaning an educational endeavor that improves or maintains professional competence, provided by CPE program sponsors for the benefit of CPAs, should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Learning activity levels include, for example, basic, intermediate, advanced, update, and overview as defined as follows:

(A) Advanced. Learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

(B) Basic. Learning activity level most beneficial to CPAs new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

(C) Intermediate. Learning activity level that builds on a basic program, most appropriate for CPAs with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

(D) Overview. Learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

(E) Update. Learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

(c) Standard No. 3. CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation of participants.

(i) To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain whether they qualify for the program.

(d) Standard No. 4. CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed, and include discussions of ethical issues that may apply to the subject matter. CPE program sponsors must be qualified in the subject matter.

(i) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated in a timely manner. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(ii) CPE program sponsors must review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(e) Standard No. 5. CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to ensure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs.

(i) Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(f) Standard No. 6. CPE program sponsors of independent study learning activities must be qualified in the subject matter.

(i) A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(g) Standard No. 7. Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(i) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course.

(A) Evaluative feedback, as used in this subsection, means: specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

(B) Reinforcement feedback, as used in this subsection, means: specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

(ii) Examinations may contain questions of varying format (for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(iii) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

(h) Standard No. 8. CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of: learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements. Instructional delivery methods, as used in this subsection, means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

(i) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(ii) CPE program sponsors should distribute program materials in a timely manner and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(i) Standard No. 9. CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(i) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance. As used in this subsection, Group Program means: An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

(ii) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(j) Standard No. 10. CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

(i) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(A) Stated learning objectives were met.

(B) If applicable, prerequisite requirements were appropriate.

(C) Program materials were accurate.

(D) Program materials were relevant and contributed to the achievement of the learning objectives.

(E) Time allotted to the learning activity was appropriate.

(F) If applicable, individual instructors were effective.

(G) Facilities and/or technological equipment was appropriate.

(H) Handout or advance preparation materials were satisfactory.

(I) Audio and video materials were effective.

(ii) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(k) Standard No. 11. CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Instructional methods means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(i) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(ii) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

(l) Standard No. 12. Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(i) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits.

(ii) When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit.

Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(iii) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(iv) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits: semester system 15 credits; quarter system 10 credits.

(v) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(vi) Credit is not granted to participants for preparation time.

(vii) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(m) Standard No. 13. CPE credit for self-study learning activities must be based on a pilot test of the average completion time.

(i) A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program.

(ii) The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials, further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.[

~~(iii) The maximum credit for self-study learning activities cannot exceed 25 percent of the CPE requirement.~~]

(n) Standard No. 14. Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(i) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation. For example, for learning activities in which participants could receive 8 CPE credits, instructors may receive up to 24 CPE credits (16 for preparation plus 8 for presentation).

(ii) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(iii) The maximum credit for instructors, discussion leaders or speakers cannot exceed 50 percent of the CPE requirement.

(o) Standard No. 15. Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.

(i) Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed by an independent party. CPE credits should be claimed only upon publication.

(ii) The maximum credit for books or articles cannot exceed 25 percent of the CPE requirement.

(p) Standard No. 16. CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract.

(i) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(q) Standard No. 17. CPE program sponsors must provide program participants with documentation of their participation, which includes the following: CPE program sponsor name and contact information, participant's name, course title, course field of study, date offered or completed, if applicable, location, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, type of instructional/delivery method used, amount of CPE credit recommended, verification by CPE program sponsor representative.

(i) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs: (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(r) Standard No. 18. CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(i) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to: records of participation, dates and locations, instructor names and credentials, number of CPE credits earned by participants, and results of program evaluations.

(ii) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(iii) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

(A) When the pilot test was conducted.

(B) The intended participant population.

(C) How the sample was determined.

(D) Names and profiles of sample participants.

(E) A summary of participants' actual completion time.

(4) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(a) Personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(b) Committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(5) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, demonstrating completion of at least the minimum number of credits required in Section 58-26a-304 for qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application demonstrating completion of the CPE required under Subsection R156-26a-307.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of this section or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(6) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under this section;

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants available for audit by representatives of the division, the board or peer advisory committees of the board.

(7) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(8) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the division at least 30 days prior to their expiration date two times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be allowed to renew their license unless they complete and report to the division, within 60 days of receiving notification by the division of their shortage and the relevant penalty hours requirement under R156-26-303b(8)(c)(i).

(iii) Waiver for Medical Reasons. A licensee may request the board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation. Granting a waiver of meeting the minimum CPE hours shall not be construed as a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

KEY: accountants, licensing, peer review, continuing professional education
[~~January 6,~~]2004
Notice of Continuation April 15, 2002
58-26a-101
58-1-106(1)(a)
58-1-202(1)(a)

Commerce, Occupational and Professional Licensing

R156-38

Residence Lien Restriction and Lien Recovery Fund Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27020
FILED: 03/30/2004, 12:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is amending the rules to comply with recent legislation (H.B. 32 and H.B. 62) passed during the 2004 legislative session. (DAR NOTE: H.B. 32 is found at UT L 2004 Ch 85, and H.B. 62 is found at UT L 2004 Ch 42, and both will be effective May 3, 2004.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-38-102, added a definition of "applicant" and updated the definition of "permissive party". In Sections R156-38-105a, R156-38-105b, and R156-38-109, technical corrections are being made in these sections to conform the rule with recent legislation. Section R156-38-204a is added which defines the documentary requirements for a homeowner to obtain a Certificate of Compliance form from the Division. The old Section R156-38-204a is changed to R156-38-204b and other technical corrections are made. In Sections R156-38-204c and R156-38-204d, technical corrections are made. The old Section R156-38-204b is changed to R156-38-204e. In Section R156-38-301a, amendments are made regarding assessments, inactive licensure as a contractor, and what assessments must be paid before a license as a contractor can be reinstated to active status.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 38-11-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state budget will see no costs or savings since the Residence Lien Recovery Fund is self-funded. The Residence Lien Recovery Fund will incur minimal costs, of approximately $50, to reprint the rule once the proposed amendments are made effective.
❖ LOCAL GOVERNMENTS: These proposed rule amendments do not apply to local governments. Therefore, there is no anticipated costs or savings for local governments.
❖ OTHER PERSONS: The Division and Residence Lien Recovery Fund expect no costs or savings beyond the expected fiscal impact of applicable legislation, which was deemed to be negligible to parties affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division and Residence Lien Recovery Fund expect no costs or savings beyond the expected fiscal impact of applicable legislation, which was deemed to be negligible to parties affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change contains various amendments that bring the Residence Lien Recovery Fund rule into compliance with statutory amendments passed during the 2004 Legislative Session and it makes some technical amendments. Thus, no fiscal impact to businesses should result beyond those already anticipated in H.B. 62. Klarice A. Bachman, Executive Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Earl Webster at the above address, by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at ewebster@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/12/2004 at 8:00 AM, 160 East 300 South, North Conference Room (First Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Applicant" means either a claimant, as defined in Subsection (2), or a homeowner, as defined in Subsection (5), who submits an application for a certificate of compliance.

(2) "Claimant" means a person who submits an application or claim for payment from the fund.

([~~2~~]3) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(3)(a).

([~~3~~]4) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

([~~4~~]5) "Homeowner" means the owner of an owner-occupied residence.

([~~5~~]6) "Licensed or exempt from licensure", as used in Subsection 38-11-204(3) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

([~~6~~]7) "Necessary party" includes the division, on behalf of the fund, and the claimant.

([~~7~~]8) "Owner", as defined in Subsection 38-11-102([~~15~~]16), does not include any person or developer who builds residences that are offered for sale to the public.

([~~8~~]9) "Permissive party" includes:

(a) the nonpaying party in a claim for payment from the fund;

(b) the original contractor in an application for a certificate of compliance; and

(c) the homeowner and any entity who will be required to reimburse the fund if a claimant's claim is paid from the fund in either a claim for payment or an application for certificate of compliance.

([~~9~~]10) "Qualified services", as used in Subsection 38-11-102([~~18~~]19) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

R156-38-105a. Adjudicative Proceedings.

(1) [~~T~~]Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim [~~against the fund~~]or application for certificate of compliance within 30 days of notification by the division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application.

(8)(a) For [~~informal~~]claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For [~~formal~~]claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

R156-38-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of claim shall be provided to [~~a claimant~~]an applicant who submits a complete application if the division determines that the [~~claim~~]application does not meet the requirements [~~for payment~~]of Section 38-11-204.

(b) A written notice of incomplete application [~~and conditional denial of claim~~]shall be provided to [~~a claimant~~]an applicant who submits an incomplete application. The notice shall advise the [~~claimant~~]applicant that the application is incomplete and that the application is denied, unless the [~~claimant~~]applicant corrects the deficiencies within the time period specified in the notice and the [~~claim~~]application otherwise meets all qualification for [~~payment~~]approval.

(2) [~~A claimant~~]An applicant may receive a single 30 day extension of the time period in Subsection (1)(b). Additional extensions of the time period shall only be granted if the [~~claimant~~]applicant makes the request in writing and demonstrates, with adequate documentation, that the [~~claimant~~]applicant:

(a) has made all reasonable efforts to complete the [~~claim~~]application;

(b) has been prevented from completing the [~~claim~~]application because of unusual and extraordinary circumstances entirely beyond its control; and

(c) can be reasonably expected to complete the [~~claim~~]application if an additional extension is granted.

(3) (a) A claimant may for any reason be granted a single request that its claim be prolonged.

(b) A claim granted prolonged status shall be inactive for a period of one year or until reactivated by the claimant, whichever comes first.

(c) At the end of the one year period, the claimant shall be required to either complete the claim or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation pursuant to Subsection R156-38-105a(9);

(ii) ongoing bankruptcy proceedings involving the nonpaying party that would prevent the claimant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(d) Upon expiration of the one year prolonged status of a claim, the Division shall issue to the claimant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the claimant an opportunity to:

(i) reactivate the claim by submitting documentation necessary to complete the claim;

(ii) withdraw the claim; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(c).

(e) Any request for renewal of prolonged status made under Subsection (3)(c)(iv) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(f) If a claimant's request for renewal of prolonged status is denied, the claimant may request agency review.

(g) A claim which has been reactivated from prolonged status may not be again prolonged unless the claimant can establish compliance with the requirements of Subsection (3)(c).

R156-38-109. Format for Form Affidavit and Motion.

The form affidavit [~~and motion~~]required under Subsection 38-1-11(4) shall be [~~prepared by the Office of the Attorney General after consultation with the director. The form shall be an answer, affidavit, and motion for summary judgment that is clearly written and easy to understand. The form shall solicit all necessary information to determine if a homeowner is entitled to the defense provided for in Section 38-11-107~~]the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38-204a. Applications for Certificate of Compliance by Homeowners - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance:

(1) a copy of the written contract between the homeowners and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) credible evidence that the contracting entity had an ownership interest in the property;

(ii) a copy of the contract between the contracting entity and the licensed contractor with whom the contracting entity contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the contracting entity by the contractor;

(iii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the division that the contractor with whom the contracting entity contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(16) and that the residence is an owner-occupied residence as defined in Subsection 38-11-102(17).

R156-38-204[~~a~~]b. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

[~~(a) a copy of the written contract between the homeowner and the contracting entity; or~~

~~(b) a copy of a civil judgment containing a finding that the homeowner entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);~~

~~(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act on the date the contract was entered into;~~

~~(b) if the homeowner contracted with a real estate developer:~~

~~(i) credible evidence that the contracting entity had an ownership interest in the property;~~

~~(ii) a copy of the contract between the contracting entity and the contractor that built the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the contracting entity by the contractor; and~~

~~(iii) credible evidence that the real estate developer offered the residence for sale to the public;~~

~~(c) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;~~

~~(3) one of the following:~~

~~(a) an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract;~~

~~(b) a copy of a civil judgment containing a finding that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or~~

~~(c) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract;~~](a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;

(b) the documents required in Section R156-38-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(3)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102(16) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(17);

([~~4~~]2) one [~~or more~~]of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence, filed within 180 days from the date the claimant last provided qualified services; or

(b) [~~a copy of the Notice of Commencement of Action filed with the division; or~~

~~(c) ~~]documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection[~~s~~] (a)[~~and (b)~~];

([~~5~~]3) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

([~~6~~]4) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

([~~7~~]5) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and[

~~(8) one of the following:~~

~~(a) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16);~~

~~(b) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16); or~~

~~(c) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with credible evidence establishing that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16).~~]

([~~9~~]6) one or more of the following:

(a) a copy of invoices setting forth a description of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the performance dates of, and the value of the qualified services claimed.

(7) If the claimant is requesting payment of costs and attorney fees not specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the Division to apply the requirements set forth in Section R156-38-204d.

([~~10~~]8) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

([~~11~~]9) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102([~~15~~]16) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102([~~16~~]17);

([~~ii~~]iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102([~~15~~]16) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102([~~16~~]17); or

([~~iii~~]iv) [~~documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent~~]other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102([~~15~~]16) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102([~~16~~]17).

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple [~~residences~~]properties, irrespective of whether those [~~residences~~]properties are owner-occupied residences, and files claim for payment on some or all of those [~~residences~~]properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by [~~residence~~]property, the amount of costs and attorney fees shall be allocated among the related [~~residences~~]properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate[~~(s)~~] or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

R156-38-204[~~b~~]e. Format for Notice of Commencement of Action.

The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:

TABLE I

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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
                OF THE DEPARTMENT OF COMMERCE
                    OF THE STATE OF UTAH

   John Doe,                      :     Notice of Commencement
        Plaintiff                 :           of Action
                                  :
             -vs-                 :     NCA No.
                                  :
   Richard Roe,                   :
        Defendant                 :

    Notice is hereby provided of the filing of Case No. (number) on
(date)
before (Court).

    Brief explanation of nature of case:

    Address of defendant:

    Name and address of potential fund claimant:

    Name and address of original contractor, subcontractor, real
estate
developer, and/or factory built housing retailer described in
Subsection
38-11-204(3)(c):

    For each owner-occupied residence included in the civil action:

         Name and address of the owner of the owner-occupied
residence;

         Street address of the owner-occupied residence;

         Amount of damages sought against the owner-occupied
residence;

         Last date qualified services were provided for the owner-
occupied residence
by the potential fund claimant:

                       Signature of Claimant or claimant's
representative

                       Date of signature
```

R156-38-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S213	Industrial Piping Contractor

	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S321	Steel Reinforcing Contractor
	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, [~~shall be exempt from~~]may defer payment of that special assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) [~~the most recent~~]all unpaid special assessments[~~ immediately preceding the date on which the license is reinstated to active status~~].

KEY: licensing, contractors, liens
[~~February 3,~~]2004
Notice of Continuation April 6, 2000
38-11-101
58-1-106(1)(a)
58-1-202(1)(a)

Commerce, Real Estate
R162-3
License Status Change

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27026
FILED: 04/01/2004, 09:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It is necessary to amend the rule to comply with statutory changes in continuing education and license activation requirements that were made by S.B. 198 (2003) and H.B. 357 (2004). The Division also needs to amend the rule so that the language of the rule will not preclude online license renewal when the technology to do online renewal is available to the Division. (DAR NOTE: S.B. 198 is found at UT L 2003 Ch 264, and was effective May 5, 2003; and H.B. 357 is found at UT L 2004 Ch 129, and will be effective May 3, 2004.)

SUMMARY OF THE RULE OR CHANGE: The continuing education requirements for activation of licenses and the requirements for reinstatement of expired licenses are changed to conform to S.B. 198 (2003) and H.B. 357 (2004), and the types of continuing education courses that will be acceptable for these purposes are specified. Requirements that renewal form and other documents be mailed to the Division have been eliminated. Provisions allowing licensees to certify that they have completed the required continuing education courses instead of mailing course completion certificates have been added to facilitate the online renewal process.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No cost or savings is anticipated. The changes in continuing education hours for real estate licensees do not affect state government and therefore no cost or savings is anticipated as a result of those changes. Allowing licensees to renew online in the future may save the Division staff costs in an unknown amount, but it is anticipated that any savings in the cost of licensing staff would be offset by increased investigative costs to spot-check whether or not the online certifications that continuing education has been completed have been truthful.
❖ LOCAL GOVERNMENTS: The rules for continuing education and license renewal for real estate agents and brokers do not involve local government, and therefore no cost or savings is anticipated.
❖ OTHER PERSONS: Any cost or savings to other persons because of the changes in continuing education and license activation requirements made by S.B. 198 (2003) and H.B. 357 (2004) are attributable to the statutory changes themselves and not to the provisions in this rule implementing the statutory changes. As to online renewals, they will of necessity involve payment of renewal fees by credit card, which will result in credit card costs to the Division that will be passed on to licensees in the form of slightly higher renewal fees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As explained with regard to anticipated cost or savings to "Other persons" above, online renewal will result in slightly higher renewal fees charged to licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As required by the passage of S.B. 198 during the 2003 Legislative Session and H.B. 357 in the 2004 Legislative Session, this rule filing contains amendments to provisions relating to continuing education and reactivation of licenses. The fiscal impact to businesses with respect to these amendments has already been addressed by the Legislature through SB198 and HB357.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.
R162-3. License Status Change.
R162-3-5. Activation.

3.5. All licensees changing to active status must submit to the Division the applicable non-refundable activation fee, [~~and~~]a [~~written~~]request for activation [~~on~~]in the form required by the Division, and, if the license was on inactive status at the time of last license renewal, proof of completion of the examination within six months prior to applying to activate or proof of completion of the 12 hours of continuing education that the licensee would have been required to complete in order to renew on inactive status.[~~—If the license has been on an "inactive" status in excess of one year, the licensee must provide to the Division a certificate evidencing completion of the education or examination requirements set forth in Section 61-2-9. At the time of the licensee's next renewal, education which was used to activate the license may not be used again for continuing education purposes.~~]

3.5.1 Continuing Education for Activation. Courses that have been approved by the Division for continuing education purposes in the following topics will be acceptable toward the continuing education required for activation: agency, contract law, the Real Estate Purchase Contract and other state-approved forms, ethics, Utah law, and closing/settlement.

3.5.1.1 To qualify as continuing education for activation, all courses submitted must have been completed within one year before activation.

3.5.1.2 Continuing education that was submitted to activate a license may not be used again toward the continuing education required on the licensee's next renewal.

R162-3-6. Renewal and Reinstatement.

3.6.1 A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on the division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees[~~return the completed renewal notice, proof of completion of 12 hours of continuing education and the applicable non-refundable renewal fee to the Division~~] on or before the expiration shown on the notice. Renewal of an active Principal Broker license requires certification in the form required by the division that the business name under which the licensee is operating is still current and in good standing with the Division of Corporations and that all real estate trust accounts are current.

3.6.1.1 Continuing education requirement. All licensees with active licenses who are applying to renew shall have completed the 12 hours of approved continuing education required by Section 61-2-9 prior to submitting their applications for renewal.

3.6.1.2 Applications filed by mail. The division will consider a properly completed application that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.

3.6.1.3 Documentation of continuing education. Any licensee who renews on-line on the division's web site and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for three years following renewal. The licensee shall produce those certificates for audit upon request by the division.

3.6.1.4 Misrepresentation on application. Any misrepresentation in an application for renewal will be considered a separate violation of these rules and separate grounds for disciplinary action against the licensee, regardless of whether the application is filed with the division by mail or in person, or made on-line.[~~3.6.1. If the renewal fee and documentation are not received within the prescribed time period, the license shall expire.~~]

3.6.2. A license expires if it is not renewed on or before its expiration date. When an active license expires, the licensee's affiliation with a principal brokerage automatically terminates.

3.6.3 The license may be renewed for a period of thirty days after the expiration date by meeting all of the conditions for renewal and, in addition, paying a non-refundable late fee, and, if the licensee will be actively licensed, submitting the forms required by the Division to activate a license[~~upon payment of a non-refundable late fee in addition to the requirements of R162-3.5 and R162-3.6~~].

3.6.[~~3~~]4. After this 30-day period and until six months after the expiration date the license may be reinstated by meeting all of the conditions for renewal and, in addition: a) paying a non-refundable late fee and a non-refundable reinstatement fee; b) submitting proof of the 12 hours of continuing education that is required to renew a license and the 12 additional hours of continuing education required by Section 61-2-9(2)(c)(ii); and c) if the licensee will be actively licensed, submitting the forms required by the Division to activate a license.[~~paying a non-refundable reinstatement fee, and providing proof of satisfactory completion of the Utah portion of the prelicensing education required under Section 61-2-6 or passing the Utah portion of the real estate examination, in addition to the requirements of R162-3.5 and R162-3.6.~~]

3.6.4.1 Additional Continuing Education Hours for Reinstatement. Courses that have been approved by the Division for continuing education purposes in the following topics will be acceptable toward the additional 12 hours of continuing education required for reinstatement by Section 61-2-9(2)(c)(ii): agency, contract law, the Real Estate Purchase Contract and other state-approved forms, ethics, Utah law, and closing/settlement.

3.6.4.1.1 Continuing education hours that are submitted to reinstate a license may not be the same continuing education hours that were submitted toward a licensee's prior renewal. Continuing education hours that are submitted to reinstate a license may not be

used again toward the continuing education required on the licensee's next renewal.

3.6.[~~4~~]5. If the licenses of licensees affiliated with a principal broker are inactivated because of the[~~A~~] principal broker's failure to renew his license when due, [~~which causes the licenses of those affiliated with him to be placed on an inactive status,~~]the failure to renew the license in a timely manner shall be separate grounds for disciplinary action against the principal broker.

3.6.[~~5~~]6. If the Division has received a licensee's application for renewal [~~documents~~]in a timely manner but the information is incomplete, the division may grant the licensee [~~shall be extended~~]a 15-day grace period to complete the application, during which time the division shall extend the license.

3.6.[~~6~~]7. Education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes in another state. These courses shall meet the Utah requirement of protection of the public, except that credit will not be given for education where the subject matter pertains to another state's license laws.

3.6.[~~6~~]7.1. Prior approval must be obtained from the division before credit will be granted. Evidence must be provided to the Division that the course was certified by another licensing jurisdiction at the time the course was taken.

KEY: real estate business
[~~April 23, 1998~~]2004
Notice of Continuation June 3, 2002
61-2-5.5

Environmental Quality, Water Quality
R317-6
Ground Water Quality Protection

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27021
FILED: 03/30/2004, 15:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Occupational and Professional Licensing (DOPL) recently enacted a rule governing the practice of geology. The proposed changes bring the ground water rules into agreement with the DOPL rule. (DAR NOTE: DOPL's Professional Geologist Licensing Act Rules is found at UT Administrative Code, Rule R156-76, and was effective September 5, 2002.)

SUMMARY OF THE RULE OR CHANGE: The rule changes include the definition of professional geologist and engineer in Subsections R317-6-1(1.31) and (1.32); and the requirement that the following submittals be performed under the direction, and bear the seal of, a professional geologist or engineer: a) ground water permit applications; b) ground water permit renewals with significant changes to the original permit; c) corrective action plans and contaminant investigations; and d) petitions for aquifer classification or reclassification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The only cost associated with the change is the DOPL fee for registering qualified state employees as professional geologists.
❖ LOCAL GOVERNMENTS: No costs or savings are anticipated, other than the possible addition of the DOPL fee for registering qualified local government employees as professional geologists.
❖ OTHER PERSONS: All of the documents that are required by the rule to be submitted by a professional geologist or engineer are usually submitted by firms or consulting practices with either a professional engineer or geologist on staff. Therefore, the proposed changes are expected to have a minimal financial impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All of the documents that are required by the rule to be submitted by a professional geologist or engineer are usually submitted by firms or consulting practices with either a professional engineer or geologist on staff. Therefore, the proposed changes are expected to have a minimal financial impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: All of the documents that are required by the rule to be submitted by a professional geologist or engineer are usually submitted by firms or consulting practices with either a professional engineer or geologist on staff. Therefore, the proposed changes are expected to have a minimal financial impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
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:
Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/21/2004

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-1. Definitions.

1.1 "Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

1.2 "Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

1.3 "Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

1.4 "Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

1.5 "Board" means the Utah Water Quality Board.

1.6 "Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

1.7 "Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

1.8 "Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

1.9 "Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

1.10 "Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

1.11 "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

1.12 "Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

1.13 "Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

1.14 "Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

1.15 "Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

1.16 "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

1.17 "Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or combination thereof.

1.18 "Gradient" means the change in total water pressure head per unit of distance.

1.19 "Ground Water" means subsurface water in the zone of saturation including perched ground water.

1.20 "Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

1.21 "Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

1.22 "Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

1.23 "Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

1.24 "Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

1.25 "New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

1.26 "Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

1.27 "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

1.28 "Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

1.29 "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

1.30 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.31 "Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act rules (UAC 156-22).

1.32 "Professional Geologist" means any person qualified to practice geology before the public in the State of Utah and professionally registered as required under the Professional Geologist Licensing Act rules (UAC R156-76).

1.3[~~1~~] "Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

1.4[~~2~~] "Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

1.35[~~3~~] "Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

1.36[4] "Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

1.37[~~5~~] "Radius of Influence" means the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

1.38[~~6~~] "Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

1.39[~~7~~] "Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

1.40[~~38~~] "Waste" see "Pollutant."

1.41[~~39~~] "Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

1.42[~~40~~] "Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

1.43[~~41~~] "Waters of the State" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof; except bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition.

1.44[~~42~~] "Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. A petition for classification or reclassification must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.[~~Any person may petition the Board for classification and reclassification.~~]

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Executive Secretary for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

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6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Executive Secretary, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. The proposed monitoring plan, which includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform to A Guide to the Selection of Materials for Monitoring Well Construction and Ground Water Sampling, (1983) and RCRA Ground Water Monitoring Technical Enforcement Guidance Manual (1986), unless otherwise specified by the Executive Secretary;

7. description and justification of parameters to be monitored.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Executive Secretary:

1. Standard Methods for the Examination of Water and Wastewater, eighteenth edition, 1992; Library of Congress catalogue number: ISBN: 0-87553-207-1.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, (1982); Book 5, Chapter A3.

4. Monitoring requirements in 40 CFR parts 141 and 142, 1991 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 1991 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

6. Manual of Analytical Methods for the Analysis of Pesticide Residues in Humans and Environmental Samples, 1980; Stock Number EPA-600/8-80-038, U.S. Environmental Protection Agency.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Executive Secretary.

R. All applications for a groundwater discharge permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

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6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Executive Secretary, the permit will continue in effect until it is renewed, extended or denied. Permit renewals with significant changes to the original permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

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6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these regulations should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location

where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a Corrective Action Plan.

3. The procedural provisions of R317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Executive Secretary determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Executive Secretary.

TABLE 2
PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.
Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any oil or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Executive Secretary within 24 hours of the spill or discharge. A written notification shall be submitted to the Executive Secretary within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107.

C. Contamination Investigation and Corrective Action Plan - General

1. The Executive Secretary may require a person that is subject to R317-6-6.15 to submit for the Executive Secretary's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Executive Secretary is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Executive Secretary a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Executive Secretary may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Executive Secretary in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317-6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Executive Secretary's staff to assure its efficient application on a site-specific basis.

4. The Executive Secretary may waive any or all Contamination Investigation and Corrective Action Plan requirements where the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Executive Secretary's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Executive Secretary as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make-up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;

(4) Climatologic and meteorologic conditions in the area of the facility; and

(5) Type, location and description of possible sources of the pollution at the facility;

(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.

c. The report of data used and data gaps shall include:

(1) Data packages including quality assurance and quality control reports;

(2) A description of the data used in the report; and

(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.

d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.

e. The Contamination Investigation shall include such other information as the Executive Secretary requires.

2. Proposed Corrective Action Plan

The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action,

addressing the factors to be considered by the Executive Secretary as specified in R317-6-6.15.E. and shall include such other information as the Executive Secretary requires. It shall also include a proposed schedule for completion.

3. The Contaminant Investigation and Corrective Action Plan must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

E. Approval of the Corrective Action Plan

After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Executive Secretary shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Executive Secretary shall consider the following factors and criteria in making that decision:

1. Completeness and Accuracy of Corrective Action Plan.

The Executive Secretary shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.

2. Action Protective of Public Health and the Environment

a. The Corrective Action shall be protective of the public health and the environment.

b. Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).

3. Action Meets Concentration Limits

The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.

4. Action Produces a Permanent Effect

a. The Corrective Action shall produce a permanent effect.

b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Board, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.

5. Action May Use Other Additional Measures

The Executive Secretary may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:

a. Requiring long-term ground water or other monitoring;

b. Providing environmental hazard notices or other security measures;

c. Capping of sources of ground water contamination to avoid infiltration of precipitation;

d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and

e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.

F. Corrective Action Concentration Limits

1. Contaminants with specified levels

Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).

2. Contaminants without specified levels

For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Executive Secretary after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.

G. Alternate Corrective Action Concentration Limits

An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:

1. Higher Alternate Corrective Action Concentration Limits

A person submitting a proposed Corrective Action Plan may request approval by the Board of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6-6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:

a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;

b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and

c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.

2. Lower Alternate Corrective Action Concentration Limits

The Board may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Board consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.

3. Protective of human health and the environment

The Alternate Corrective Action Concentration Limit must be protective of human health and the environment. In making this determination, the Board may consider:

a. Information presented in the Contamination Investigation;

b. Other relevant cleanup or health standards, criteria, or guidance;

c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Board may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Board may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Board may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Board may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

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KEY: water quality, ground water
[~~January 30, 2003~~]2004
Notice of Continuation October 17, 2002
19-5

Environmental Quality, Water Quality
R317-10
Certification of Wastewater Works Operator

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27022
FILED: 03/30/2004, 17:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The objective of the proposed amendment is to clarify the rules in order to bring them more into harmony with actual practices used by the wastewater operator certification program of the Division of Water Quality. The Utah Wastewater Operator Certification Council has recommended many of the suggested changes as proposed by the Association of Boards of Certification (ABC) regarding classification of the facilities, as well as exam and certification practices. The Water Quality Board concurs with the recommendations.

SUMMARY OF THE RULE OR CHANGE: In Subsection R317-10-5(A), clarifies that supervisors of systems who are not responsible for the process decisions are not required to be certified as operators. But, any person who has "direct responsible charge" as defined in this rule, does need to meet the qualifications of certification. In Subsection R317-10-5(B), changes the requirement to notify the Executive Secretary in cases where the facility (system) loses the services of the Chief Operator for reasons other than "termination", such as active military duty or extended incapacitation. In Section R317-10-6, in Tables 1 and 2, miscellaneous minor changes to facility classification system are made. In Section R317-10-7, clarification of requirements for operator certification grades and renewals for consistency within the rule are made. In Subsection R317-10-11(G), language and formatting to better reflect the intent of the statute that allowed up to three years following adoption of the rules to obtain initial certification are added. Certificates must be renewed on time to prevent the facility from being considered "out of compliance." If certificate is not renewed, the operator must take an exam to become certified. Several other editorial changes are also proposed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed amendments will be addressed using existing staff and resources. No impact to state budget is anticipated.

❖ LOCAL GOVERNMENTS: A small percentage of communities may find that the requirements for certification of "direct responsible charge (DRC)" operators, notification of incapacity of DRC, changes in facility classification, or requirements for "grandfather" certificates may affect them. However, no additional significant costs are anticipated to meet the new requirements.

❖ OTHER PERSONS: The proposed amendments apply to political subdivisions of the state that operate wastewater treatment works and sewerage systems. No impact to other persons is anticipated unless a person with a grandfather certificate allows it to expire. There is no "reinstatement" allowed for in the proposed rule, so they would need to take a certification exam for the regular fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A small percentage of communities or districts have managerial personnel who supervise the day-to-day operations, but who do not have a part in the decisions regarding the quality of the water and its treatment. These communities will be able to hire individuals who are not certified as wastewater operators to perform those other functions without having to worry about them being able to qualify as operators. This could prove an overall savings and better use of the skills of the individuals and resources available. No significant additional costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments apply to political subdivisions of the state that operate wastewater treatment works and sewerage systems. No impacts to businesses are anticipated.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
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:

Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/21/2004

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
R317-10. Certification of Wastewater Works Operators.
R317-10-1. Objectives.

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; to protect the public health and the environment and provide for the health and safety of wastewater works operators; and to establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems. Wastewater works operated by political subdivisions must employ certified operators as required in this rule. Operators of wastewater systems not requiring certified operators (such as industrial wastewater treatment systems) may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The Certification Program for Wastewater Works Operators is authorized by Section 19-5-104 of the Utah Code Annotated.

R317-10-4. Definitions.

A. "Board" means the Water Quality Board.

B. "Category" means type of certification (collection or wastewater treatment).

C. "Certificate" means a certificate issued by the Council, stating that the recipient has met the minimum requirements for the specified operator grade described in this rule.

D. "Certified Operator" means a person with the appropriate education and experience, as specified in this rule, [~~that~~]who has successfully completed the certification exam or otherwise meets the requirements of this rule.

E. "Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

F. "Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

G. "Council" means the Utah Wastewater Operator Certification Council.

H. "Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

I. "Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may effect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

J. "Executive Secretary" means the Executive Secretary of the Water Quality Board.

K. "Grade Level" means any one of the possible steps within a certification category of either wastewater collection or wastewater treatment. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

L. "Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in R317-10-11.G of this rule.

M. "Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

N. "Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

O. "Population Equivalent (P.E.)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of B.O.D. contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

P. "Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

Q. "Small Lagoon System" means a wastewater lagoon system designed to serve fewer than 3500 design population equivalent.

R. "Wastewater Works" means facilities for collecting, pumping, treating or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system and are designated to be in direct responsible charge must be certified at no less than the level of the facility

classification. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification or at the lowest required facility classification except as provided in B below. All facilities must have an operator certified at the facility level on duty or on call. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after notification of the new rating.

B. The Executive Secretary must be notified by the facility owner within 10 working days [~~Upon~~]after termination of employment of the Chief Operator[~~,~~] considered in DRC, or when he is otherwise unable to perform those duties[~~the Executive Secretary must be notified within 10 working days by the facility owner~~]. The wastewater works must have a certified operator or an operator with a restricted certificate at the appropriate level within one year from the date the vacancy occurred.

C. For newly constructed[~~—If the~~] wastewater works[~~is newly constructed~~], a certified operator or an operator with a restricted certificate at the appropriate level must be employed within one year after the system is deemed operable.

[~~C~~]D. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

[~~D~~]E. Contracts

1. General. In lieu of employing a DRC operator as part of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by the Executive Secretary.

3. If the contract is with another entity, it must include the names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

a. A clear description of the overall duties and responsibilities of the facility owner and the responsibilities of the contracted DRC operator(s) related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed.

b. Identification of the contract period and effective date of the contract

c. Consideration

d. Termination clause

e. Execution by authorized signatories

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS I	II	III	IV
Collection (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 and greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Design Pop. Equiv.	3,500 and less			

(1) Simple "in-line" treatment (such as booster pumping, preventive chlorination, or odor control) is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works/collection system operation.

TABLE 2
WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
[~~Variation in raw waste:~~]VARIATION IN RAW WASTE (3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
[~~Impact~~]Acceptance of septage o[~~f~~]r truck-hauled waste	2[~~0 — 4~~]
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed [~~F~~]film reactor [~~trickling filters, RBC's~~]	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8
TERTIARY TREATMENT	
Polishing ponds[~~, wetlands~~] for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary	10
Biological or chemical/biological advanced waste treatment	12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis [~~for advanced~~]and other [~~waste treatment~~]membrane filtration techniques	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	[~~4~~]5
ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. [~~6~~]of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5

SOLIDS HANDLING	
Solids conditioning	2
Solids thickening (based on technology)	2 - 5[~~5~~]
Mechanical dewatering	8
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
[~~Mechanical dewatering of solids~~	~~8~~]
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction of facility operator in DRC[~~operator~~	~~10~~]
[~~Disinfection: (0-)~~]DISINFECTION (10 pt. max.)[~~10~~]	
Chlorination or ultraviolet irradiation	5
Ozonation	10
[~~Effluent discharge:~~]EFFLUENT DISCHARGE ([~~0~~]10 pt. max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
Land treatment and disposal (surface or subsurface)	4
INSTRUMENTATION ([~~0~~]6 [~~P~~]pt. [~~M~~]max.)	
Use of SCADA[~~,~~]or similar instrumentation systems to provide data with no process operation	0
Use of SCADA[~~,~~]or similar instrumentation systems to provide data with limited process operation	2
Use of SCADA[~~,~~]or similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA[~~,~~]or similar instrumentation systems to provide data with extensive/total process operation	6
[~~Laboratory Control:~~]LABORATORY CONTROL ([~~0~~]15 pt. [~~M~~]max)(4)	
Bacteriological/biological ([~~0~~]5 pt. [~~M~~]max)[~~):~~]:	
Lab work done outside the plant[~~-~~]	0
Membrane filter procedures[~~-~~]	3
Use of fermentation tubes or any dilution[~~-~~] _method (fecal coliform determination)	5
Chemical/physical ([~~0~~]10 pt. max):	
Lab work done outside the plant[~~-~~]	0
Push-button, visual methods for simple tests[~~-~~] _(i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas[~~-~~] _analysis, titrations, solids volatile _content)	5
More advanced determinations (ie, specific[~~-~~] _constituents; nutrients, total oils, _phenols)	7
Highly sophisticated instrumentation (i.e., [~~-~~] _atomic absorption, gas chromatography) [~~1-10~~]	10

(1) 1 point[~~,~~] per 10,000 P.E. or part; maximum of 10 points
(2) 1 point[~~,~~] per MGD or part
(3) Key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation may be in terms of strength, toxicity, shock loads, inflow and infiltration, with point values ranging from 0 - 6.
[~~(4) Key concept is the degree of dilution provided under low flow conditions with point values ranging from 0 - 6.~~
~~(5)~~](4) Key concept is to credit laboratory analyses done on-site by plant personnel under the direction of the operator in direct responsible charge with point values ranging from 0 - [~~20~~]15.

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means total of years of education and experience required. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the Council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified below.

B. Grade I - 13 points required

1. [~~Twelve years education (one point per year)~~]High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. One year operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - 14 points required

1. [~~Twelve years education (one point per year)~~]High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Two years operating experience (one point per year)

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - 16 points required

1. [~~Twelve years education (one point per year)~~]High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Four years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least one year of the operating experience must have been at a Class II facility or higher.

E. Grade IV - 18 points required

1. [~~Twelve years education (one point per year)~~]High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points)

2. Six years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least two years of the operating experience must have been at a Class III facility or higher.

R317-10-8. Council.

A. Members of the Council shall be appointed by the Board from recommendations made by interested organizations including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Professional Wastewater Operators Division of the Water Environment Association of Utah, the Utah Rural Water Association, Utah Valley State College, and the Civil/Environmental Engineering Departments of Utah's universities. The Council shall serve at the discretion of the Board to oversee the certification program.

B. The Council shall consist of eight members as follows:

1. Three members who are operators holding valid certificates. At least one shall be a wastewater collection system operator.

2. One member with three years[~~.~~] management experience in wastewater treatment and collection, who shall represent municipal wastewater management.

3. One member who is a civil or environmental engineering faculty member of a university in Utah.

4. One non-voting member who is a Senior Environmental Engineer in the Division of Water Quality or other duly designated person who shall represent the Board.

5. One member from the private sector.

6. One member representing vocational training.

C. Voting Council members shall serve as follows:

1. Terms of office shall be for three years with two members retiring each year (except for the third year when three shall retire).

2. Appointments to succeed a Council member who is unable to serve his full term shall be for the remainder of the unexpired term.

3. Council members may be reappointed, but they do not automatically succeed themselves.

D. Each year the Council shall elect from its membership a Chairman and Vice Chairman.

E. The duties of the Council shall include:

1. Preparing and conducting examinations for the various grades of operators, and issuing and distributing the certificates.

2. Regularly reviewing the certification examinations to ensure compatibility between the examinations and operator responsibilities.

3. Ensuring that the certification examinations and training curricula are compatible.

4. Distributing examination applications and notices.

5. Receiving all applications for certification and evaluating the record of applicants as required to establish their qualifications for certification under this rule.

6. Maintaining records of operator qualifications and certification.

7. Preparing an annual report for distribution to the Board and other interested parties.

F. A majority of voting members shall constitute a quorum for the purpose of transacting official Council business.

R317-10-9. Application for Examination.

Prior to taking an examination, an applicant must file an application of intention with the Council, accompanied by evidence of qualifications for certification in accordance with the provisions of this rule on application forms available from the Council.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the Council. All examinations shall be graded and the applicant notified of the results. Examination fees shall be charged to cover the costs of testing.

B. Normally, all examinations for certification shall be written. However, upon request an oral examination will be given. Such examination shall be conducted by at least two Council members in a manner that will ensure the integrity of the certification program.

C. In the event an applicant fails an exam, the applicant may request to review the exam within 30 days following receipt of the exam score. The Council shall not review examination questions for the purpose of changing individual examination scores. However, questions may be edited for future examinations. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. All certificates shall indicate one of the following grades for which they are issued.

1. Wastewater [~~Works~~]Treatment Operator - Grades I through IV.

2. Restricted Wastewater [~~Works~~]Treatment Operator - [~~Restricted~~]Grades I through IV.

3. Wastewater Collection [~~System~~]Operator - Grades I through IV.

4. Restricted Wastewater Collection [~~System~~]Operator - [~~Restricted~~]Grades I through IV.

5. Small Lagoon System Operator - Grade I Wastewater [~~Works/~~]Treatment and Collection System Combined.

6. Restricted Small Lagoon System Operator - [~~Restricted~~]Grade I Wastewater [~~Works/~~]Treatment and Collection System Combined.

B. An applicant shall have the opportunity to take any grade of examination higher than the classification of the system which he or she operates. A restricted certificate shall be issued if the applicant passes the exam but lacks the experience or education required for a particular grade.

An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met. Restricted certificates shall become unrestricted when the appropriate experience and education requirements are met and a change in status fee is paid. A restricted certificate does not qualify a person as a certified operator at the grade level that the restricted certificate is issued, until the limiting conditions are met, except as provided in R317-10-5. Upon application, a restricted certificate may be renewed subject to the conditions in C below. Replacement certificates may be obtained by payment of a duplicate certificate fee.

C. Certificates shall continue in effect for a period of up to three years unless revoked prior to that time. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs. The certificates expire on December 31 of the last year of the certificate. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule. Request for renewal shall be made on forms supplied by the Council. It shall be the responsibility of the operator to make application for certificate renewal.

D. An expired certificate may be reinstated within three months after expiration by payment of a reinstatement fee. After three months, an expired certificate cannot be reinstated, and the operator must retest to become certified. The required CEUs for renewal must be accrued before expiration of the certificate.

E. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

F. The Council may, after appropriate review, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided. When the applicant provides proof of employment in the wastewater field in Utah, and meets all other requirements, a certificate may be issued.

G. A grandfather certificate shall be issued, upon application and payment of an administrative fee, to qualified operators who must be certified (chief operators, supervisors, or anyone considered in direct responsible charge). The certificate shall be valid only for the

wastewater works at which the operator is employed as that facility existed on March 16, 1991. Operators must obtain initial certification on or before March 16, 1994. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule.

[~~—~~]Grandfather certificates shall be issued for a period of up to three years and must be renewed prior to the expiration date to remain in effect. Renewal shall include the payment of a renewal fee and submittal of evidence of required CEUs. The renewal fee shall be the same as that charged for renewal of other certificates. If the grandfather certificate is not renewed prior to the expiration date, the wastewater works may be considered to be out of compliance with this rule. The operator would then be required to pass the appropriate certification examination to become a certified operator.

The grandfather certificate shall be issued if the currently employed operator:

1. Was a chief operator or person in direct responsible charge of the wastewater works on March 16, 1991; and

2. Had been employed at least ten years in the operation of the wastewater works prior to March 16, 1991; and

3. Demonstrates to the Council his capability to operate the wastewater works at which he is employed by providing employment history and references.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

TABLE 3
REQUIRED CEUs FOR RENEWAL OF EACH CERTIFICATE

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to wastewater works operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Council. Training records shall be maintained by the Council.

C. All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Council. In-house or in-plant training must meet the following general criteria to be approved:

1. Instruction must be under the supervision of an instructor approved by the Council.

2. An outline must be included with all submittals listing subjects to be covered and the time allotted to each subject.

3. A list of the teacher's objectives must be submitted which documents the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

[4]D. No more than one-half of required CEU credits, over a three[-]-year period prior to the expiration date[~~following issuance~~] of a certificate, shall be given for registration and attendance at the annual technical program meetings of the Water Environment Association of Utah, the Water Environment Federation, Rural Water Association of Utah, or similar organizations.

[~~5~~]E. Training must be related to the responsibilities of a wastewater works operator. If a person holds [~~two~~]multiple wastewater operator certificates (treatment and collection), CEU credit may be received for each certificate from one training experience only if the training is applicable to each certificate. It is recommended that at least one-half of the required CEUs be technical training directly related to the job duties.

R317-10-13. Recommendations of the Council.

A. Initial recommendations. All decisions of the Council shall be in the form of recommendations for action by the Executive Secretary. The Council shall notify an applicant of any initial recommendation. Any such applicant may, within 30 days of the date the Council's notice was mailed, request reconsideration and an informal hearing before the Council by writing to: Wastewater Operator Certification Council, Division of Water Quality, Department of Environmental Quality, State of Utah, Salt Lake City, Utah 84114-4870. The Council shall notify the person of the time and location for the informal hearing.

B. Following the informal hearing, or the expiration of the period for requesting reconsideration, the Council shall notify the Executive Secretary of its final recommendation.

C. A challenge to the Executive Secretary's determination regarding Certification may be made as provided in R317-9-3.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. Demonstrated disregard for the public health and safety;

2. Misrepresentation or falsification of figures and/or reports submitted to the State;

3. Cheating on a certification exam;

4. Falsely obtaining or altering a certificate; or

5. Gross negligence, incompetence or misconduct in the performance of duties as an operator.

B. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

C. The Council may make recommendations to the Executive Secretary regarding the suspension or revocation of a certificate. Prior to making any such recommendation, the Council shall inform the individual in writing of the reasons the Council is considering such a recommendation. The Council shall allow the individual an opportunity for an informal hearing before the Council. Any request for an informal hearing shall be made within 30 days of the date the Council's notification is mailed.

D. Following an informal hearing, or the expiration of the period for requesting a hearing, the Council shall notify the Executive Secretary of its final recommendation.

E. A challenge to the Executive Secretary's determination may be made as provided in R317-9-3.

R317-10-15. Noncompliance.

A. Noncompliance with these Certification rules is a violation of Section 19-5-115 Utah Code Annotated.

B. The Council shall refer cases of noncompliance with this rule to the Executive Secretary.

KEY: water pollution, operator certification, wastewater treatment
[~~January 30, 2003~~]2004
Notice of Continuation October 7, 2002
19-5

Health, Children's Health Insurance Program
R382-10
Eligibility

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27050
FILED: 04/01/2004, 20:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is needed to change application provisions for the Children's Health Insurance Program (CHIP) coverage. This change will allow children who lose Medicaid eligibility because they have reached the maximum age limit of the program or are no longer deprived of parental support, to apply for CHIP without waiting for the next open enrollment period. It also describes the quarterly premium charged to CHIP enrollees and the consequences for nonpayment. It also makes other minor corrections and clarifications.

SUMMARY OF THE RULE OR CHANGE: In Section R382-10-2, adds a definition for the quarterly premium an enrollee must pay to receive CHIP coverage. In Section R382-10-16, allows a child who loses Medicaid coverage because the child has reached the maximum age limit for the program to apply for CHIP without waiting for the next open enrollment period and allows a child who loses Medicaid coverage because the child is no longer deprived of parental support to apply for CHIP without waiting for the next open enrollment period. In Section R382-10-17, increases the maximum number of days in which a CHIP eligibility determination must be made from 30 to 45 days from the date of the application. In Section R382-10-19, clarifies that applicants may apply for CHIP by FAX during an open enrollment period. In Section R382-10-20, adds language to include failing to pay a quarterly premium as a reason for an eligible child to lose CHIP coverage prior to the end of the 12-month enrollment period. In Section R328-10-21, puts into rule a premium process allowed by federal law that was implemented in 2002, families with income above 100% of the federal poverty level pay this premium. Penalties for nonpayment of premium are also specified.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 40; Section 26-40-103; and Title XXI of the Social Security Act

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: We anticipate approximately 56 new CHIP enrollees per month as a result of the changes to Section R382-10-16. There is no net effect to the state budget because these enrollees would otherwise be enrolled during the open enrollment period. By allowing these new enrollees to become eligible each month, the time between open enrollments may increase. Since 2002, premium payments have been collected so there will be no change as a result of this rule. About 4,200 enrolled families with income between 150% and 200% of the federal poverty level pay the $25 quarterly premium and 5,200 families with income between 100% and 150% of the federal poverty level pay the $13 quarterly premium, for a total of $690,400.
❖ LOCAL GOVERNMENTS: The change to allow enrollment in CHIP after loss of Medicaid coverage will have some positive fiscal impact to local governments that provide health care. However, the amount of the impact is uncertain and difficult to quantify.
❖ OTHER PERSONS: We anticipate approximately 56 new CHIP enrollees per month as a result of the changes to Section R382-10-16. This will have a positive impact on these families but the amount is impossible to quantify. Families in CHIP will continue to pay the quarterly premium now in effect, about 4,200 enrolled families pay the $25 quarterly premium and 5,200 families pay the $13 quarterly premium, for a total of $690,400.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since 2002, premium payments have been required. This rule will not change the premium. A family with income between 150% and 200% of the federal poverty level pays the $25 quarterly premium and a family with income between 100% and 150% of the federal poverty level pays the $13 quarterly premium.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rulemaking will allow children who lose Medicaid eligibility because they have reached the maximum age limit of the program or are no longer deprived of parental support, to apply for CHIP without waiting for the next open enrollment period. It also describes the quarterly premium charged to CHIP enrollees and the consequences for nonpayment. There will be a positive impact on medical providers that serve this population by allowing eligibility to continue without interruption. Scott D. Williams, MD, Executive Director

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 801-538-6860, or by Internet E-mail at ghenderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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 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) "Quarterly Premium" means a payment that enrollees must pay every 3 months to receive coverage under CHIP.

(j) "Renewal month" means the last month of the eligibility period for an enrollee.

([~~i~~]k) "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.

R382-10-16. Application and 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. 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 open enrollment periods in person, through the mail, by fax, or online.

(4) A family who has a child enrolled in CHIP, may enroll a new child born to or adopted by a household member without waiting for the next open enrollment period.

(5) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(6) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(7) 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.

([~~6~~]8) 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~~]45 days of the date of application. If a decision can not be made in [~~30~~]45 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 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 and chooses not to meet the spenddown can be enrolled in CHIP.

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 accepts applications in person, through the mail, by fax, or online. The Department sorts applications according to the date received. When an application is received through the mail, the date of receipt is the date of the postmark. When an application is submitted online, the date of receipt is 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 prior to the open enrollment date, except as provided in R382-10-16.

R382-10-20. 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 under a group health plan or other health insurance coverage, [~~or~~] enters a public institution, or does not pay his or her quarterly premium. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-21. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of $13.00.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $25.00.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums before the children can be re-enrolled.

R382-10-[~~21~~]22. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at 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;

(c) the child has entered a public institution; or

(d) the child has enrolled in other health insurance coverage, in which case eligibility may cease immediately and without prior notice.

R382-10-[~~22~~]23. 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
[~~January 5~~], 2004
Notice of Continuation June 10, 2003
26-1-5
26-40

Health, Epidemiology and Laboratory Services, Epidemiology

R386-702

Communicable Disease Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27024
FILED: 04/01/2004, 08:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking updates the list of diseases to incorporate new additions to the nationally notifiable disease list, addresses recently emerging or re-emerging diseases (to clarify timing of reporting), updates guidelines on control of rabies, and implements the Detection of Public Health Emergencies Act, Utah Code, Title 26, Chapter 23b.

SUMMARY OF THE RULE OR CHANGE: This rulemaking adds new diseases to list of reportable diseases (e.g., smallpox, monkeypox, West Nile virus); specifies a time (less than 24 hours) for immediate reporting, changes the required time of reporting from 7 to 3 days for other diseases, changes chickenpox reporting from summary numbers to individual case reports, clarifies rabies control measures, and implements the Detection of Public Health Emergencies Act, Utah Code, Title 26, Chapter 23b.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-30 and 26-6-3; and Title 26, Chapter 23b

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: American Public Health Association, "Control of Communicable Diseases Manual", 17th ed., 2000; The National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2004, Part II"; and American Academy of Pediatrics, "Red Book: 2003 Report of the Committee on Infectious Diseases" 26th edition, 2003

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The reporting of additional diseases under these amendments can be handled under existing communicable disease programs in the Department of Health. No additional costs are anticipated.
❖ LOCAL GOVERNMENTS: The reporting of additional diseases under these amendments can be handled under existing communicable disease programs in the local health departments. No additional costs are anticipated for local health departments. Local governments that operate hospitals and clinics may experience intermittent increases in reporting, depending on where disease outbreaks occur. These costs will be transient and minimal but are not easily quantified.
❖ OTHER PERSONS: Hospitals, clinics, and other entities required to report under the rule may experience intermittent increases in reporting, depending on where disease outbreaks occur. These costs will be transient and minimal but are not easily quantified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for an entity required to report under the rule will be intermittent, depending on where disease outbreaks occur. These costs will be transient and minimal but are not easily quantified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There may be some cost for reporting entities when reporting possible disease outbreaks. However, the costs will be intermittent and isolated to specific geographic areas. This reporting is essential to protect the public health and is particularly important to identify and respond to possible bioterrorism events. Scott D. Williams, MD, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
EPIDEMIOLOGY
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:
Robert Rolfs at the above address, by phone at 801-538-6386, by FAX at 801-538-6694, or by Internet E-mail at rrolfs@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R386. Health, Community Health Services, Epidemiology.
R386-702. Communicable Disease Rule.
R386-702-1. Purpose Statement.

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, [~~and~~]26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual [~~prevalence~~]occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) [~~Communicable disease epidemiology serves as an ideal model for preventive medicine. E~~]The successes of medicine and public health dramatically reduced the risk of epidemics [~~are rare~~]and early loss of life due to infectious agents [~~has been dramatically reduced~~]during the twentieth century. However, the recent emergence of new diseases, such as Human Immunodeficiency Virus, Hantavirus, and Severe Acute Respiratory Syndrome, and the rapid spread of diseases to the United States from other parts of the world, such as West Nile virus, made possible by advances in transportation, trade, food production, and other factors highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies and other entities that are partners in protecting the public's health are crucial to[~~will~~] maintain and improve the health of the citizens of Utah.

R386-702-2. Definitions.

(1) Terms in this rule are defined in Section 26-6-2 and 26-23b-102, except that for purposes of this rule, "Department" means the Utah Department of Health.

(2) In addition:

(a) "Outbreak" means an epidemic limited to a localized increase in incidence of disease.

(b) "Case" means a person identified as having a disease, health disorder, or condition that is reportable under this rule or that is otherwise under public health investigation.

(c) "Suspect" case means a person who a reporting entity, local health department, or Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

R386-702-3. Reportable Diseases, Emergency Illnesses, and Health Conditions.

(1) The Utah Department of Health declares the following [~~diseases~~]conditions to be of concern to the public health and reportable as required or authorized by Section 26-6-6 and Title 26, Chapter 23b of the Utah Health Code.[~~Each confirmed or suspected case shall be reported to the Bureau of Epidemiology, Utah Department of Health or to the local health department. Upon receipt of a report, the local health department shall forward a written or electronic copy of the report to the Bureau of Epidemiology, Utah Department of Health.~~]

(a) Acquired Immunodeficiency Syndrome

(b) Adverse event resulting after smallpox vaccination

(c) Amebiasis

([~~e~~]d) Anthrax

(e) Arbovirus infection

([~~d~~]f) Botulism

([~~e~~]g) Brucellosis

([~~f~~]h) Campylobacteriosis

([~~g~~]i) Chancroid

([~~h~~]j) Chickenpox

([~~i~~]k) Chlamydia trachomatis infection

([~~j~~]l) Cholera

([~~k~~]m) Coccidioidomycosis

([~~l~~]n) Colorado tick fever

([~~m~~]o) Creutzfeldt-Jakob disease and other transmissible human spongiform encephalopathies

([~~n~~]p) Cryptosporidiosis

([~~o~~]q) Cyclospora infection

(r) Dengue fever

([~~p~~]s) Diphtheria

([~~q~~]t) Echinococcosis

([~~r~~]u) Ehrlichiosis, human granulocytic,[~~and~~] human monocytic, or unspecified

([~~s~~]v) Encephalitis[~~primary, post-infectious, arthropod-borne and unspecified~~]

([~~t~~]w) Enterococcal infection, vancomycin-resistant

([~~u~~]x) Enterohermorrhagic Escherichia coli (EHEC) infection, including Escherichia coli O157:H7

([~~v~~]y) Giardiasis

([~~w~~]z) Gonorrhea: sexually transmitted and ophthalmia neonatorum

([~~x~~]aa) Haemophilus influenzae, invasive disease

([~~y~~]bb) Hansen Disease (Leprosy)

([~~z~~]cc) Hantavirus infection[~~s~~] and pulmonary syndrome

([~~aa~~]dd) Hemolytic Uremic Syndrome, postdiarrheal

([~~bb~~]ee) Hepatitis A

([~~cc~~]ff) Hepatitis B, cases and carriers

(gg) Hepatitis C, acute and chronic infection

([~~dd~~]hh) Hepatitis, other viral[~~type C, and non-A non-B~~]

([~~ee~~]ii) Human Immunodeficiency Virus Infection. Reporting requirements are listed in R388-803.

([~~ff~~]jj) Influenza, laboratory confirmed

([~~gg~~]kk) Kawasaki syndrome

([~~hh~~]ll) Legionellosis

([~~ii~~]mm) Listeriosis

([~~jj~~]nn) Lyme Disease

([~~kk~~]oo) Malaria

([~~ll~~]pp) Measles

([~~mm~~]qq) Meningitis, aseptic and bacterial (specify etiology)

([~~nn~~]rr) Meningococcal Disease, invasive

([~~oo~~]ss) Mumps

(tt) Norovirus, formerly called Norwalk-like virus, infection

([~~pp~~]uu) Pelvic Inflammatory Disease

([~~qq~~]vv) Pertussis

([~~rr~~]ww) Plague

([~~ss~~]xx) Poliomyelitis, paralytic

([~~tt~~]yy) Psittacosis

([~~uu~~]zz) Q Fever

([~~vv~~]aaa) Rabies, human and animal

([~~ww~~]bbb) Relapsing fever, tick-borne and louse-borne

([~~xx~~]ccc) Reye syndrome

([~~yy~~]ddd) Rheumatic fever

([~~zz~~]eee) Rocky Mountain spotted fever

([~~aaa~~]fff) Rubella

([~~bbb~~]ggg) Rubella, congenital syndrome

(hhh) Saint Louis encephalitis

([~~eee~~]iii) Salmonellosis

(jjj) Severe Acute Respiratory Syndrome (SARS)

([~~ddd~~]kkk) Shigellosis

(lll) Smallpox

([~~eee~~]mmm) Staphylococcal diseases, all outbreaks[~~and~~]

(nnn) Staphylococcus aureus with resistance or intermediate resistance to vancomycin [~~or~~]isolated from any site

(ooo) Staphylococcus aureus with resistance to methicillin isolated from any site

([~~fff~~]ppp) Streptococcal [~~D~~]disease, invasive,[~~Group A,~~] isolated from a normally sterile site[~~(ggg) Streptococcal Toxic Shock Syndrome~~]

([~~hhh~~]qqq) Streptococcus pneumoniae, drug-resistant[~~invasive disease~~], isolated from a normally sterile site

([~~iii~~]rrr) Syphilis, all stages and congenital

([~~jjj~~]sss) Tetanus

([~~kkk~~]ttt) Toxic-Shock Syndrome, staphyloccal or streptococcal

([~~lll~~]uuu) Trichinosis

([~~mmm~~]vvv) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.

([~~nnn~~]www) Tularemia

([~~ooo~~]xxx) Typhoid, cases and carriers

(yyy) Viral hemorrhagic fever

(zzz) West Nile virus infection

([~~ppp~~]aaaa) Yellow fever[~~(qqq) Severe Acute Respiratory Syndrome (SARS)~~]

([~~rrr~~]bbbb) Any outbreak or epidemic, including suspected or confirmed outbreaks of foodborne or waterborne disease. Any [~~sudden or extraordinary~~]unusual occurrence of infectious or communicable disease or any unusual or increased occurrence of any illness that may indicate an outbreak, epidemic, Bioterrorism event, or public health hazard, including any newly recognized, emergent or re-emergent disease or disease producing agent, including newly identified multi-drug resistant bacteria[~~is also reportable. Any disease occurrence, pattern of cases, suspect cases, or increased incidence of any illness which may indicate an~~

~~outbreak, epidemic or related public health hazard, including but not limited to suspected or confirmed outbreaks of foodborne or waterborne disease, newly recognized or re-emergent diseases or disease producing agents, shall be reported immediately by telephone to the Bureau of Epidemiology, Utah Department of Health, 801-538-6191~~].

(2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses or health conditions to be of concern to the public health and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency.

(a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);

(b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);

(c) influenza-like constitutional symptoms and signs;

(d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(e) rash illness;

(f) hemorrhagic illness;

(g) botulism-like syndrome;

(h) lymphadenitis;

(i) sepsis or unexplained shock;

(j) febrile illness (illness with fever, chills or rigors);

(k) nontraumatic coma or sudden death; and

(l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

R386-702-[~~3~~]4. Reporting.

(1) [~~Case Report:~~]Each reporting entity shall report each confirmed case and any case who the reporting entity believes in its professional judgment is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-(1)(bbbb) to the local health department or to the Office of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the [~~Bureau~~]Office of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting [~~sources~~]entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the Office of Epidemiology, Utah Department of Health.

(2) [~~Immediate Reports: Any outbreak or suspected outbreak shall be reported immediately by telephone. Cases and suspect cases of anthrax, botulism, cholera, diphtheria, measles, meningococcal disease, mumps, pertussis, plague, poliomyelitis, rabies, relapsing fever, rubella, tetanus, tuberculosis, typhoid, yellow fever, and Severe Acute Respiratory Syndrome (SARS) are to be made by telephone to the Bureau of Epidemiology, Utah Department of Health, 801-538-6191, or the local health department.~~]Where immediate reporting is required, the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the Office of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824). All diseases not required to be reported immediately or by number of cases shall be reported within three working days from the time of identification. Reporting entities shall send reports to the local health department or the Office of Epidemiology, 288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104.

(3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals and facilities required to report diseases known or suspected of being communicable.

(a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.

(b) Schools, child day care centers, and citizens shall provide any relevant information.

(c) Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results that provide presumptive evidence of infection such as positive tests for syphilis, measles, and viral hepatitis.

(d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.[

~~(3) Case Notification:Chickenpox, influenza, Staphylococcus aureus with resistance to methicillin and vancomycin resistant enterococcus are to be reported by number of cases only. These reports shall be made monthly.~~]

(4) Immediately Reportable Conditions: Cases and suspect cases of anthrax, botulism, cholera, diphtheria, Haemophilus influenzae (invasive disease), measles, meningococcal disease, pertussis, plague, poliomyelitis, rabies, rubella, Severe Acute Respiratory Syndrome (SARS), smallpox, syphilis (primary or secondary stage), tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)(bbbb) are to be made immediately as provided in R386-702-4(2).

(5) Staphylococcus aureus (MRSA) and vancomycin resistant enterococcus (VRE) shall be reported monthly by number of cases. Full reporting of all relevant patient information related to MRSA and VRE cases is authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.

(6) Reports of emergency illnesses or health conditions under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. The report shall include at least, if known, the name of the facility, a patient identifier, the date and time of visit, the patient's age and sex, the zip code of the patient's residence, the reportable condition suspected and whether the patient was admitted to the hospital. Full reporting of all relevant patient information is authorized.

(7) An entity reporting emergency illnesses or health conditions under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet definition for a reportable emergency illness or health condition. The report shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex; and

(f) patient's zip code for patient's residence;

(8) Mandatory Submission of Isolates: Laboratories shall submit all isolates of the following organisms to the Utah Department of Health, public health laboratory:

(a) Bacillus anthracis;
(b) Bordetella pertussis;
(c) Brucella species;
(d) Campylobacter species;
([~~d~~]e) Clostridium botulinum;
([~~e~~]f) Cornybacterium diphtheriae;
([~~f~~]g) Enterococcus, vancomycin-resistant;
([~~g~~]h) Escherichia coli, enterohemorrhagic;
([~~h~~]i) Francisella tularensis;
([~~i~~]j) Haemophilus influenzae, from normally sterile sites;
([~~j~~]k) Influenza, types A and B;
([~~k~~]l) Legionella species;
([~~l~~]m) Listeria monocytogenes;
([~~m~~]n) Mycobacterium tuberculosis complex;
([~~n~~]o) Neisseria gonorrhoeae;
([~~o~~]p) Neisseria meningitidis, from normally sterile sites;
([~~p~~]q) Salmonella species;
([~~q~~]r) Shigella species;
([~~r~~]s) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site;
([~~s~~]t) Vibrio cholera;
([~~t~~]u) Yersinia species; and
(v) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

Submission of an isolate does not replace the requirement to report the case also to the local health department or Office of Epidemiology, Utah Department of Health.

[~~(5) Occurrence of Unusual Diseases: Any unusual disease of public health importance, including newly identified multi-drug resistant bacteria, and any outbreak or undue prevalence of a disease, whether or not listed as reportable, shall also be promptly reported by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health.~~

~~(6) Timing of Reports: All diseases not required to be reported by telephone or by number of cases shall be reported within seven calendar days from the time of identification. Reports are to be sent to the local health department or the Bureau of Epidemiology, 288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104.~~

~~(7) Individuals Required to Report Communicable Diseases: Section 26-6-6 lists those individuals and facilities required to report diseases known or suspected of being communicable. Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case. Schools, child day care centers, and citizens shall provide any relevant information. Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results which provide presumptive evidence of infection such as positive tests for syphilis, measles, and viral hepatitis.~~

~~(8)~~](9) Epidemiological Review: The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.

(10) Confidentiality of Reports: All reports required by this rule are confidential and are not open to public inspection. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers. All information collected pursuant to this rule may not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

R386-702-[4]5. General Measures for the Control of Communicable Diseases.

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the [~~Bureau~~]Office of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases [~~which~~]that are dangerous or important or [~~which~~]that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the [~~Bureau~~]Office of Epidemiology, Utah Department of Health or official reference listed in R386-702-[~~9(1)(a)~~]11.

(3) Prevention of the Spread of Disease From a Case.

[~~(a)~~]The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Public Food Handlers.

[~~(a)~~]A person known to be infected with a communicable disease that can be transmitted by food, water, or milk, or who is suspected of being infected with such a disease may not engage in the commercial handling of food, water, or other drink or be employed in a dairy or on any premises handling milk or milk products, until he is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(5) Communicable Diseases in Places Where Milk or Food Products are Handled or Processed.

[~~(a)~~]If a case, carrier, or suspected case of a disease [~~which~~]that can be conveyed by milk or food products is found at any place where [~~dairy~~]milk or food products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these milk or food products, the local health department may immediately prohibit the sale, or removal of milk and all other food products from the premises. Sale or distribution of milk or food products from the premise may be resumed when measures have been taken to eliminate the threat to health from the food and its processing as prescribed by R392-100.

(6) Request for State Assistance.

[~~(a)~~]If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the [~~Bureau~~]Office of Epidemiology. If the local health

officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(7) Approved Laboratories.

[~~(a) -~~]Laboratory analyses which are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

R386-702-[~~5~~]6. Special Measures for Control of Rabies.

(1) Rationale of Treatment.

[~~(a) -~~]A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-[~~5~~]6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any [~~other~~] carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personn[~~a~~]el shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-[~~5~~]6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis [~~and~~]or testing. Unusual exposures to any animal should be reported to the local health department or the [~~Bureau~~]Office of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the [~~Bureau~~]Office of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-[~~5~~]6(2)(e) may be waived by the [~~Bureau~~]Office of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the [~~veterianian~~]veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-[~~5~~]6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-[~~5~~]6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-

[~~9(b)~~]11(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the [~~Bureau~~]Office of Epidemiology, Utah Department of Health.

([~~i~~]b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the [~~Bureau~~]Office of Epidemiology, Utah Department of Health, [~~801-538-6191~~]using the process described in R386-702-4.

([~~b~~]c) The Compendium of Animal Rabies Prevention and Control, [~~1999, Part II,~~]as adopted and incorporated by reference in R386-702-11(3), is the reference document for animal vaccine use.

([~~c~~]d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

([~~d~~]e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

([~~e~~]f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

([~~f~~]g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(4) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health [~~finds~~]determines that a rabies outbreak is present in an area of the state[~~, and a quarantine is declared~~], the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated [~~at three months of~~]or revaccinated against rabies as appropriate for each animal's age;[~~. Unvaccinated animals are subject to confinement and possible destruction.~~]

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

R386-702-[~~6~~]7. Special Measures for Control of Typhoid.

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Enteric precautions are required during hospitalization. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on not less that three negative cultures of feces[,] and of urine in patients with schistosomiasis, taken [~~at least 24 hours apart and at least 48 hours after any antibiotic, and not earlier than one month after onset~~]as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained. The patient shall be restricted from food handling and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is required for all household members of known typhoid carriers. Household and close contacts shall not be employed in occupations likely to facilitate transmission of the disease, such as food handling, during the period of contact with the infected person until at least two negative feces and urine cultures, taken at least 24 hours apart, are obtained from each contact.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case [~~shall be reported by the attending physician~~]by telephone to the local health department or the [~~Bureau~~]Office of Epidemiology, Utah Department of Health[~~, 801-538-6191,~~] using the process described in R386-702-4.[~~and c~~] Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling and patient care until released in accordance with R386-702-[~~6.~~]7(4)(a) or R386-702-[~~6~~]7(4)(b). All reports and orders of supervision shall be kept confidential and [~~shall~~]may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-[~~6~~]7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the [~~Bureau~~]Office of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-[~~6~~]7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the [~~Bureau~~]Office of Epidemiology, and shall:

(a) Require the necessary laboratory tests for release;

(b) Issue written instructions to the carrier;

(c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: [~~A convalescent or chronic carrier may be released from supervision and occupational and food handling restrictions by the local health officer or his representative.~~]The local health officer or his representative may [~~grant~~] release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, [~~T~~]three consecutive negative cultures [~~of feces , and urine in patients with schistosomiasis, are obtained from fecal specimens taken at least one month apart and at least 48 hours after antibiotic therapy has stopped. The attending physician, hospital personnel, laboratory personnel, or local health department staff shall authenticate that the fecal specimens come from the known carrier.~~]obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped; or

([~~b) In the judgment of~~]c) the local health officer or his representative[~~,~~] determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state.

R386-702-[~~7~~]8. Special Measures for the Control of Ophthalmia Neonatorum.

[~~(1)~~]Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

R386-702-9. Public Health Emergency.

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily;

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in 702-9(3)(b) and shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age

(e) patient's sex

(f) patient's zip code for patient's residence;

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

R386-702-[~~8~~]10. Penalties.

[~~(1)~~]Any person who violates any provision of R386-702 may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

R386-702-[~~9~~]11. Official References.

[~~(1)~~]All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

([~~a~~]1) American Public Health Association. "Control of Communicable Diseases Manual". 1[~~6~~]7th ed., [~~Abram S. Benenson, editor, 1995~~]Chin, James, editor, 2000.

([~~b~~]2) Centers for Disease Control and Prevention. Recommendation of the Immunization Practices Advisory Committee (ACIP): Human rabies Prevention - United States, 1999. "Morbidity and Mortality Weekly Report." 1999; 48: RR-1, 1-21.

([~~c~~]3) The National Association of State Public Health Veterinarians, Inc.[-], "Compendium of Animal Rabies Prevention and Control, [~~1999~~]2004, Part II."

(4) American Academy of Pediatrics. "Red Book: 2003 Report of the Committee on Infectious Diseases" 26th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2003.

KEY: communicable diseases, rules and procedures
[~~August 22, 2003~~]2004
Notice of Continuation August 20, 2002
26-1-30
26-6-3
26-23b

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1A

Medicaid Policy for Experimental, Investigational or Unproven Medical Practices

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27023
FILED: 03/31/2004, 13:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to comply with H.B. 126, which eliminated the ability to implement the Medicaid program by policy and required that Medicaid policies be put into rule. As with experimental or unproven medical practices, investigational medical practices are not proven to be medically efficacious or widely utilized as standard medical practices. Therefore, investigational medical practices are not covered Medicaid services. (DAR NOTE: H.B. 126 is found at UT L 2003 Ch 324, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: The term "investigational" is added to the title of the rule and is included in Sections R414-1A-1, R414-1A-2, and R414-1A-3. In addition, this rule updates an outdated reference to the definition of medical necessity found in Subsection R414-1-2(17).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because the existing policy on coverage of investigational medical practices is simply being implemented in rule pursuant to recent amendments to the state Medicaid statute.
❖ LOCAL GOVERNMENTS: There is no impact to local governments as a result of this rulemaking because the existing policy on coverage of investigational medical practices is simply being implemented in rule pursuant to recent amendments to the state Medicaid statute.
❖ OTHER PERSONS: There is no impact to other persons as a result of this rulemaking because the existing policy on coverage of investigational medical practices is simply being implemented in rule pursuant to recent amendments to the state Medicaid statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the existing policy on coverage of investigational medical practices is simply being implemented in rule pursuant to recent amendments to the state Medicaid statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule updates a citation and clarifies that Medicaid does not cover investigational medical practices. This is consistent with current Medicaid policy and will not change reimbursement for any provider. Scott D. Williams, MD

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1A. Medicaid Policy for Experimental, Investigational or Unproven Medical Practices.
R414-1A-1. Introduction and Authority.
(1) This rule establishes Medicaid payment policy for experimental, investigational or unproven medical practices.
(2) This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(4).

R414-1A-2. Definitions.
(1) The definitions in R414-1 apply to this rule.
(2) In addition:
(a) "Experimental, investigational or unproven medical practice" means any procedure, medication product, or service that is:

(i) not proven to be medically efficacious for a given procedure; or

(ii) performed for or in support of purposes of research, experimentation, or testing of new processes or products; or

(iii) both;

(b) "Medically efficacious" means a medical practice that:

(i) has been determined effective and is widely utilized as a standard medical practice for specific conditions; and

(ii) has been approved as a covered Medicaid service by division staff and physician consultants on the basis of medical necessity, as defined in [~~R414-13x-1(5)(a)~~]R414-1-2(17);

(c) "Supporting services" means supplies or laboratory, X-ray, physician, pharmacy, therapy, or transportation services.

R414-1A-3. Medicaid Policy.

(1) Experimental, investigational or unproven medical practices are not covered Medicaid services.

(2) Procedures or services proven to be medically efficacious for specific medical conditions may be provided as covered Medicaid services only for the conditions specified. Procedures or services are not covered Medicaid services for any other conditions or for investigational or experimental trials.

(3) Inpatient or outpatient hospitalization for the purpose of receiving services or procedures that are experimental, investigational or medically unproven, or in support of such services or procedures, is not a covered Medicaid service. If services or procedures are provided during hospitalization for an otherwise medically necessary and appropriate service, experimental, investigational or unproven medical procedures are excluded from reimbursement.

KEY: M[~~m~~]edicaid
[~~September 4, 1997~~]2004
Notice of Continuation June 25, 2002
26-1-5
26-18-3(2)

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-55

Medicaid Policy for Hospital Emergency Department Copayment Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27049
FILED: 04/01/2004, 17:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to comply with H.B. 126 (2003), which eliminated the ability to implement the Medicaid program by policy and required that Medicaid policies be put into rule. The Department policy has been to charge a copayment. This amendment places that policy into rule. (DAR NOTE: H.B. 126 is found at UT L 2003 Ch 324, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: In Section R414-55-1, the reference to the October 1993 edition of the Code of Federal Regulations (CFR) has been changed to October 2003, because the October 2003 edition is the most recent edition of the CFR which authorizes the current policy of nonexemption of Health Maintenance Organizations (HMO) enrollees from copayment requirements. In addition, the definition of HMO enrollees has been deleted from Section R414-55-2. Finally, Section R414-55-3 no longer lists HMO enrollees as a category for exemption from copayment requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5; and 42 CFR 447.53

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 447.15 and 447.50 through 447.59, October 2003

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because it implements by rule existing policy provisions that the state Medicaid statute previously allowed to be implemented by policy.

❖ LOCAL GOVERNMENTS: There is no impact to local governments associated with this rulemaking because it implements by rule existing policy provisions that the state Medicaid statute previously allowed to be implemented by policy.

❖ OTHER PERSONS: There is no impact to other persons associated with this rulemaking because it implements by rule existing policy provisions that the state Medicaid statute previously allowed to be implemented by policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact for affected persons associated with this rulemaking because it implements by rule existing policy provisions that the state Medicaid statute previously allowed to be implemented by policy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For several years Medicaid has imposed this copay consistent with federal law. This rule will therefore not have any fiscal impact on businesses. Scott D. Williams, MD

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-55. Medicaid Policy for Hospital Emergency Department Copayment Procedures.
R414-55-1. Introduction and Authority.

This rule establishes Medicaid copayment policy for non-emergency use of outpatient hospital emergency departments by Medicaid clients who are not in any of the categories exempted from copayment requirements. The rule is authorized by 42 CFR 447.15 and 447.50 through 447.59, Oct. [~~1993~~]2003 ed., which are adopted and incorporated by reference.

R414-55-2. Definitions.

In addition to the definitions in R414-1, the following definitions also apply to this rule:

(1) "Child" means any person under the age of 18.

(2) "Copayment" means that form of cost sharing required of a Medicaid client at the time a service is provided, with the amount of copayment specified beforehand.

(3) "Emergency Services" means those services defined by a select group of International Classification of Diseases, Ninth Revision, (ICD9) diagnosis codes which Medicaid shall identify for hospital Emergency Departments by means of Medicaid Information Bulletins.[~~(4) "HMO Enrollees" means individuals enrolled with any Health Maintenance Organization (HMO).~~]

([~~5~~]4) "Hospital Emergency Department" means that area of a hospital in which emergency services are provided on a 24-hour-a-day basis.

R414-55-3. Copayment Policy.

(1) Medicaid clients in the following categories are exempted from copayment requirements:

(a) children;

(b) pregnant women; and

(c) institutionalized individuals[~~;~~ ~~(d) HMO enrollees~~].

(2) Emergency services are exempted from copayment requirements.

(3) Family planning services and supplies are exempted from copayment requirements.

(4) Medicaid shall impose a copayment in the amount of $6 when a Medicaid client, as designated on his Medicaid card, receives non-emergency services in a Hospital Emergency Department.

(5) The provider shall collect the copayment amount from the Medicaid client for those services which require copayment. Medicaid shall deduct the $6 copayment amount from the reimbursement paid to the provider.

KEY: M[~~m~~]edicaid
[~~1994~~]2004

Notice of Continuation September 16, 2003
26-1-5
26-18-3

▼ ▼

Human Services, Recovery Services
R527-210
Guidelines for Setting Child Support Awards

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 27004
FILED: 03/16/2004, 11:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 78-45-7.11 was amended by S.B. 132 (May 5, 2003) to incorporate specific reduction in support procedures for all extended parent-time situations except one: The statute allows the "administrative agency" (Office of Recovery Services/Child Support Services (ORS/CSS)) to approve the extended parent-time reduction when it is authorized only by agreement of the parties and the child is a recipient of financial public assistance. Previously, ORS/CSS did not allow a reduction to the base child support award for extended parent-time when the child was a recipient of financial public assistance; a stance supported by the existing text in this rule. ORS/CSS will now apply the criteria defined in Section 78-45-7.11 to all cases when reducing child support for extended parent-time, eliminating the need for the portion of this rule regarding financial public assistance cases. Section R527-210-2 is obsolete, as it duplicates existing statute, Section 78-45-7.20. (DAR NOTE: S.B. 132 is found at UT L 2003 Ch 176, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This proposed repeal removes Section R527-210-1 that indicates that ORS/CSS will not reduce the base child support award for extended parent-time if the child is a recipient of financial public assistance; and Section R527-210-2 that duplicates existing statute, Section 78-45-7.20. In other words, this rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78-45-7.11 and 78-45-7.20

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: One purpose of this rule change is to remove the distinction between financial public assistance cases and other case types when reducing the base child support award for extended parent-time. ORS/CSS will carry out the requirements and procedures described in Section 78-45-7.11 in the same manner on all cases, regardless of financial public assistance status. While this may cause a slight reduction to the amount of federal assistance that is

reimbursed by non-custodial parents, it is anticipated that the impact will be minimal due to the strict criteria outlined in the statute to qualify for an extended parent-time reduction. An exact dollar amount for this impact is unknown as it would depend on many variables: whether the extended parent-time occurs during financial public assistance time periods, the number of cases that would meet the extended parent-time criteria, the amount of base child support award on each qualifying case, the duration of extended parent-time, etc. There is a minimal savings to the state as a result of applying one set of procedures uniformly. Other costs, if any, involved with the extended parent-time reduction process would be due to the underlying statute's requirements; however, the statute was passed with no fiscal note attached. There are no additional costs anticipated as a result of removing the administrative rule language that duplicates an existing statute, and savings due to removing the upkeep of the obsolete rule language are minimal. Any other costs involved with the accountability of support process are due to the underlying statute's requirements.

❖ LOCAL GOVERNMENTS: None--Administrative rules of the Office of Recovery Services do not apply to local governments.

❖ OTHER PERSONS: The purpose of this rule change is to remove the distinction between financial public assistance cases and other case types when reducing the base child support for extended parent-time. ORS/CSS will carry out the requirements and procedures described in Section 78-45-7.11 in the same manner on all cases, regardless of financial public assistance status. This may represent an additional savings to some non-custodial parents who, under the existing rule, would not have been allowed a reduction for extended parent-time when the children were recipients of financial public assistance. Costs to other persons, if any, involved with the extended parent-time reduction process would be due to the underlying statute's requirements; however, the statute was passed with no fiscal note attached. There are no costs or savings to other persons anticipated as a result of removing administrative rule language that duplicates an existing statute. Any other costs involved with the accountability of support process are due to the underlying statute's requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Costs to affected persons, if any, would be due to the underlying statutes, Sections 78-45-7.11 and 78-45-7.20 which ORS/CSS will be implementing as written. There are no additional costs due to changing this rule to apply an existing statute to all cases regardless of financial public assistance status or due to removing language that duplicates an existing statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: ORS/CSS will be carrying out the requirements and procedures described in Sections 78-45-7.11 and 78-45-7.20.

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:
Liesa Corbridge at the above address, by phone at 801-536-8986, by FAX at 801-536-8833, or by Internet E-mail at lcorbri2@utah.gov

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

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
|~~R527-210. Guidelines for Setting Child Support Awards.~~
~~R527-210-1. Reduction for Extended Parent-time.~~

~~1. If the support order does not specifically provide that the base child support award will be reduced for extended parent-time and the child is a recipient of financial public assistance, the Office of Recovery Services/Child Support Services (ORS/CSS) shall not reduce the support obligation.~~

~~R527-210-2. Accountability of Support Provided to Benefit Child.~~

~~At the time of issuing an administrative order for current support, ORS/CSS may include in the order, upon the petition of the obligor, a provision for the obligee to furnish an accounting of amounts provided for the child's benefit to the obligor. In order to be eligible, the obligor must be current on all child support; the obligor must not have a child support arrearage.~~

~~KEY: child support~~
~~October 17, 2003~~
~~Notice of Continuation January 13, 2004~~
~~62A-11-304.2~~
~~78-45-7.11~~
~~78-45-7.20~~
~~78-45-7.21~~|

▼ ▼

Human Services, Recovery Services
R527-231
Review and Adjustment of Child Support Order

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27006
FILED: 03/17/2004, 10:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to allow for an exception to doing reviews and modifications on orders when a party is incarcerated.

SUMMARY OF THE RULE OR CHANGE: This change is to formalize an existing exception to conducting reviews and modifying orders when a parent is incarcerated. The courts traditionally decline to modify downward based on the current income of the incarcerated parent and instead deviate from the statutory guidelines and retain previously set support levels under these circumstances. Office of Recovery Services/Child Support Services (ORS/CSS) pursues new and modified orders based on the statutory guidelines in Sections 78-45-7.2 through 78-45-7.21, which require the use of current or prospective income of the parties. When an attempt is made to petition the court for a modification based on current or prospective income for an incarcerated parent, judges do not accept the new amount because it is typically a lowered amount. The outcome is no modification and the order becomes a deviation from the mandatory guidelines instead of a modification based on actual circumstances. As a result, pursuit of these modifications has proven counter productive for ORS/CSS and the Attorney General's Office. The rule will not require review/adjustment on orders where either parent is incarcerated.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78-45-7.2 through 78-45-21, and 62A-11-320.5 and 62A-11-320.6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No change--To date the Office of the Attorney General has screened these cases on the basis of prior case law and declined to petition courts for downward modifications.

❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services do not apply to local government.

❖ OTHER PERSONS: No change--It will continue to be necessary for incarcerated individuals to pursue actions on their own if they wish to petition courts for downward modifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no change. It will continue to be necessary for incarcerated individuals to pursue actions on their own if they wish to petition courts for downward modifications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses due to this rule change.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kristen Lowe at the above address, by phone at 801-536-0347, by FAX at 801-536-8833, or by Internet E-mail at klowe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
R527-231. Review and Adjustment of Child Support Order.
R527-231-1. Review and Adjustment of Child Support Order.

1. If the child is within one year of emancipation, the Office of Recovery Services/Child Support Services (ORS/CSS) shall not be required to review the award for potential adjustment.

2. If the location of either parent is unknown, ORS/CSS shall not be required to review the support award for possible adjustment until both parents are located.

3. ORS/CSS shall pursue the setting of statutory child support guideline amounts in review and adjustment proceedings, based on the current and prospective incomes of the parties. If either parent is incarcerated, ORS/CSS shall not be required to review and pursue adjustment of a support award.

[~~3~~]4. ORS/CSS shall pursue adjustment of a court order only for child support or medical support provisions. ORS/CSS shall not pursue modification of a court order for custody, visitation, property division or other non-child support related provisions.

[4]5. If the parent requesting the review does not provide the necessary information for ORS/CSS to conduct the review, ORS/CSS shall send notice to the address on record for the requesting and non-requesting parents that the review process will be terminated unless the non-requesting parent requests that the review process continue.

[~~5~~]6. If the review process is terminated, ORS/CSS shall not be required to review the order for a period of one year.

KEY: child support
[~~October 18, 1999~~]2004
Notice of Continuation December 3, 2001
78-45-7.2
62A-11-320.5
62A-11-320.6

▼ ▼

Human Services, Recovery Services
R527-258
Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27007
FILED: 03/17/2004, 10:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for this change is to add procedures for when the obligor is in the Half Way Back program or in a treatment program for mental illness or substance abuse. We are also clarifying the definition of "twelve consecutive months" and what enforcement action may occur during the twelve months.

SUMMARY OF THE RULE OR CHANGE: The reason for this change is to add enforcement procedures for when the non-custodial parent is in the Half Way Back program or in a treatment program for mental illness or substance abuse. Procedures for discharging arrears when the non-custodial parent is in a treatment program were added. Also clarifies the definition of "twelve consecutive months" and what enforcement action may occur during the twelve months.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78-45-7 and 62A-11-320

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no change to the state budget because the procedures for discharging arrears when the non-custodial parent is in a treatment program are already in effect.
❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services do not apply to local government.
❖ OTHER PERSONS: There will be no cost or savings to others because these procedures are already in effect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the procedures are already in effect.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create or cause an impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kristen Lowe at the above address, by phone at 801-536-0347, by FAX at 801-536-8833, or by Internet E-mail at klowe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.
R527-258-1. Non-Collection from Ex-Prisoners in the Half-way Back or Comparable Program.

1. If the obligor is a participant in the Half Way Back or comparable program, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the treatment.

2. The Office of Recovery Services/Child Support Services (ORS/CSS) will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-[~~1~~]2. Enforcing Child Support When the Obligor is an Ex-Prisoner.

1. The [~~AFDC~~]federal title IV-A past-due support debt which accrued while the obligor was incarcerated may be forgiven if he makes both the full monthly current support payment and the full monthly assessed [~~monthly~~]payment[~~s~~] [~~on both current support and arrears~~]toward the past-due support debt for twelve consecutive months. The clock starts for the twelve consecutive month period when: (a) the obligor is employed; or (b) six months after the obligor is released, whichever occurs first.

2. During the first six months of a period of twelve consecutive months, [~~no enforcement action will be taken~~]the office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate[~~without the consent of the probation officer. If the obligor does not make the full assessed payments each month, enforcement action may begin in the seventh month~~].

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may begin in the seventh month.

b. If the obligor makes the full payment each month for twelve consecutive months, the remaining IV-A support debt owed for the period of incarceration shall be forgiven.

3. The obligor's arrearage payment shall be reassessed by the office if his financial situation changes during the twelve-month period.[

~~4. If at the end of twelve months, the full assessed amount has been paid each month, the remaining AFDC support debt for the time period of incarceration shall be discharged.~~]

R527-258-3. Enforcement of Child Support for Obligors in Treatment Programs.

1. If the obligor is in a licensed mental health or substance abuse treatment program, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the in-patient treatment or up to six months of out-patient treatment.

2. Up to six months of the federal title IV-A past-due support debt which accrued while the obligor was in a treatment program may be forgiven if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The clock starts for the twelve consecutive month period when: (a) the obligor is employed; (b) six months after the obligor is released from the in-patient treatment

program; or (c) six months after out-patient treatment begins, whichever occurs first.

KEY: administrative law, child support
[~~1987~~]2004
Notice of Continuation September 11, 2002
78-45-7.15
62A-11-320.1

Natural Resources, Oil, Gas and Mining; Non-Coal
R647-1-106
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27015
FILED: 03/26/2004, 10:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change adds in part, the necessary rulemaking for S.B. 159 from the 2002 General Session of the Utah Legislature. (DAR NOTE: S.B. 159 is found at UT L 2002 Ch 194, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: This change adds a definition essential to implement the inspection and enforcement provisions of S.B. 159 (2002).

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is very little or no anticipated impact to the State budget from this rule as the enforcement procedures currently in use by the Division and Board are more complex and require more administrative activity than is contemplated from the enforcement powers granted by S.B. 159. These changes allow more efficient field activity. In either case, under the previous law or the revised one, if an operator exhibits poor environmental compliance, penalties may be assessed and collected at about the same cost. The amount of these collections is not quantifiable at this time due to an inability to predict future performance.
❖ LOCAL GOVERNMENTS: If local government chooses to operate a non-coal mine, it may be affected by this rule if compliance performance is sub-standard. Traditionally, however, mines are run by private industry, the effect on industry is outlined in the response to "Other persons" below.
❖ OTHER PERSONS: Others who may be affected by this rule are mining companies. While the rule in combination with other provisions authorizes the assessment of civil penalties, these penalties would be levied only in cases of noncompliance or malcompliance. Those additional costs are not quantifiable at this time because it is difficult to predict future compliance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Industry compliance costs should not increase as a result of this rule since the standards for performance are not changing, only the method of enforcement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact for those businesses who are in full compliance with the reclamation program. Penalties will be assessed for those businesses who are not in compliance with the regulatory program.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/28/2004 at 10:00 AM, 1594 West North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-1. Minerals Regulatory Program.
R647-1-106. Definitions.

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

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

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

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

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

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto, which has been approved by the Division. An approved notice of intention is not required for exploration having a disturbed area of five or less surface acres, or for small mining operations.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Notice of Intention" means a notice of intention to commence mining operations, including any amendments or revisions thereto.

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

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

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

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

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

"Permit" means a notice to conduct mining operations issued by the Division. A notice to conduct mining operations is issued by the Division when either a notice of intention for a small mining

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

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

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

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

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

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

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

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

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

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

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

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

KEY: minerals reclamation
[~~June 15, 1998~~]2004
Notice of Continuation July 8, 2003
40-8-1 et seq.

▼ ▼

Natural Resources, Oil, Gas and Mining; Non-Coal
R647-6
Inspection and Enforcement: Division Authority and Procedures

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27016
FILED: 03/26/2004, 10:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule adds in part, the necessary rulemaking for S.B. 159 from the 2002 General Session of the Utah Legislature. (DAR NOTE: S.B. 159 is found at UT L 2002 Ch 194, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: This proposed new rule outlines procedures essential to implement the inspection and enforcement provisions of S.B. 159.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is very little or no anticipated impact to the State budget from this new rule as the enforcement procedures currently in use by the Division and Board are more complex and require more administrative activity than is contemplated from the enforcement powers granted by S.B. 159. This new rule allows more efficient field activity. In either case, under the previous law or the revised one, if an operator exhibits poor environmental compliance, penalties may be assessed and collected at about the same cost. The amount of these collections is not quantifiable at this time due to an inability to predict future performance.

❖ LOCAL GOVERNMENTS: If local government chooses to operate a non-coal mine, it may be affected by this rule if compliance performance is substandard. Traditionally, however, mines are run by private industry, the effect on industry is outlined in the response to "Other person" below.

❖ OTHER PERSONS: Others who may be affected by this rule are mining companies. While the rule in combination with other provisions authorizes the assessment of civil penalties, these penalties would be levied only in cases of noncompliance or malcompliance. Those additional costs are not quantifiable at this time because it is difficult to predict future compliance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Industry compliance costs should not increase as a result of this new rule since the standards for performance are not changing, only the method of enforcement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact for those businesses who are in full compliance with the reclamation program. Penalties will be assessed for those businesses who are not in compliance with the regulatory program.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/28/2004 at 10:00 AM, 1594 West North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-6. Inspection and Enforcement: Division Authority and Procedures.
R647-6-101. General Information on Authority and Procedures.

(1) Enforcement Authority. Nothing in the Utah Mined Land Reclamation Act will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-8-8, 40-8-9 and 40-8-9.1 of the Utah Mined Land Reclamation Act.

(2) Inspection Program. The Division will conduct inspections of each mining operation and reclamation under its jurisdiction for the purpose of enforcing the provisions of Title 40, Chapter 8.

2.11. Division representatives shall be allowed to enter upon and through any minerals mining operation and reclamation without advance notice. Division Representatives need to check in on site or make an attempt to contact the permittee or operator, if available, prior to proceeding through the site.

2.12. Division representatives shall be allowed to inspect any monitoring equipment or method of exploration, operation or reclamation and have access to and may copy any records required under the Utah Mined Land Reclamation Act.

(3) Compliance Conference.

3.11. A permittee or operator may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice at any mining operation and reclamation. Any such conference will not constitute an inspection within the meaning of Section 40-8-9 and R647-6-101.2.

3.12. The Division may accept or refuse any request to conduct a compliance conference under R647-6-101.3.11. A conference will be considered an inspection if a condition or practice exists which is described in R647-6-102.1.11.111 or 1.11.112.

3.13. The authorized representative at any compliance conference will review such conditions and practices in order to advise whether any such condition or practice is, or may become a violation of any requirement of the Utah Mined Land Reclamation Act or any applicable permit or exploration approval.

3.14. Neither the holding of a compliance conference under this section nor any statement given by the authorized representative at such a conference will affect:

3.14.111. Any rights or obligations of the Division or of the permittee or operator with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

3.14.112. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R647-6-102. Provisions of State Enforcement.

1. Cessation Orders.

1.11. The Division will immediately order a cessation of mining operations and reclamation or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the Utah Mined Land Reclamation Act, or any condition of a permit under the Utah Mined Land Reclamation Act, which:

1.11.111. Creates an imminent danger to the health or safety of the public; or

1.11.112. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

1.12. Mining operations and reclamation conducted by any person without a valid permit constitute a condition or practice described in R647-6-102.1.111 or 1.11.112.

1.13. If the cessation ordered under R647-6-102.1.11 will not completely abate the conditions described in R647-6-102.1.11.111 or 1.11.112 in the most expeditious manner physically possible, the Division will impose affirmative obligations on the permittee or operator to abate the violation. The order will specify the time by which abatement will be accomplished.

1.14. When a notice of violation has been issued under R647-6-102.2 and the permittee or operator fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of mining operations and reclamation, or of the portion relevant to the violation. A cessation order issued under R647-6-102.1.14 will require the permittee or operator to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

1.15. A cessation order issued under R647-6-102.1.11 or R647-6-102.1.14 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

1.15.111. The nature of the violation;

1.15.112. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

1.15.113. The time established for abatement, if appropriate, including the time for meeting any interim steps;

1.15.114. A reasonable description of the portion of the mining operation and reclamation to which it applies; and

1.15.115. That the order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

1.16. Reclamation and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided.

1.17. The Division may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee or operator.

1.18. The Division will terminate a cessation order by written notice to the permittee or operator, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations under R647-7.

2. Notices of Violation.

2.11. When on the basis of any Division inspection the Division determines that there exists a violation of the Utah Mined Land Reclamation Act or any condition of a permit required by the Utah Mined Land Reclamation Act, which does not create an imminent danger or harm for which a cessation order must be issued under R647-6-102.1, the Division will issue a notice of violation to the permittee or operator fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

2.12. A notice of violation issued under R647-6-102.2 will be in writing, signed by the authorized representative of the Division, and will set forth with reasonable specificity:

2.12.111. The nature of the violation;

2.12.112. The remedial action required, which may include interim steps;

2.12.113. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

2.12.114. A reasonable description of the portion of the mining operation or reclamation to which it applies.

2.13. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee or operator. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee or operator that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R647-6-102.2.16. An extended abatement date pursuant to this section will not be granted when the permittee or operator's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee or operator in completing the remedial action required.

2.14. If the permittee or operator fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R647-6-102.1.14.

2.15. The Division will terminate a notice of violation by written notice to the permittee or operator, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Division to assess civil penalties for those violations under R647-7.

2.16. Circumstances which may qualify a mining operation and reclamation for an abatement period of more than 90 days are:

2.16.111. Where good cause is shown by the permittee or operator;

2.16.112. Where climatic conditions preclude complete abatement within 90 days;

2.16.113. Where due to climatic conditions, abatement within 90 days would clearly cause more environmental harm than it would prevent; or

2.16.114. Where the permittee's or operator's action to abate the violation within 90 days would violate safety standards established by the Mine Safety and Health Act of 1977.

2.17. Other requirements on abatement times extended beyond 90 days.

2.17.111. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

2.17.112. The permittee or operator will have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under R647-6-102.2.16 and R647-6-102.2.17.

2.17.113. Any determination made under R647-6-102.2.13 will contain a right of appeal pursuant to R647-5.

3. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

3.11. A notice of violation, cessation order, or order to show cause will be served on the permittee or operator promptly after issuance by one of the following methods:

3.11.111. Personal service, in accordance with the Utah Rules of Civil Procedure. Service shall be effective on the date of personal service.

3.11.112. Delivery by United States mail or by courier service, provided the person being served signs a document indicating receipt. Service shall be complete on the date the receipt is signed.

3.11.113. First posting a copy of the notice at a conspicuous location at the mine site or offices of the place of violation, and thereafter by personally delivering or mailing a copy by certified mail to the permittee or operator at the last address provided to the Division. Service shall be complete upon personal delivery or three days after the date of mailing.

3.12. Service on the permittee or operator shall be sufficient if service is made upon:

3.12.111. an officer of a corporation,

3.12.112. the person designated by law for service of process, or the registered agent for the corporation,

3.12.113. an owner, or partner of an entity other than a corporation, or

3.12.114. a person designated in writing by the permittee or operator as a person authorized to receive notice from the Division for matters pertaining to the mining operation and reclamation.

3.13. Proof of Service.

3.13.111. Proof of personal service shall be made in accordance with the provisions of the Utah Rules of Civil Procedure,

3.13.112. Proof of service by certified mail or courier shall be made by obtaining a copy of the receipt signed by the recipient.

3.13.113. Proof of posting, or personal delivery may be made by a signed written statement of the person effecting posting, or personal delivery stating the date, time, and place of posting. In addition, if personal delivery, the person to whom the notice was delivered.

4. Stop Work Conference.

4.11. Except as provided in R647-6-102.4.12 a notice of violation or cessation order which requires cessation of mining, will expire within 30 days after it is served unless a Stop Work Conference, under the rules of informal process (R645-5), has been held within that time. The Stop Work Conference will be held within 5 days of request, at or reasonably close to the mine site so that the site may be viewed during the conference or at any other location acceptable to the Division and the permittee or operator. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division and permittee or operator. Expiration of a notice or order will not affect the Division's right to assess civil penalties for the violations mentioned in the notice or order under R647-7.

4.12. A notice of violation or cessation order will not expire as provided in R647-6-4.11, if the condition, practice or violation in question has been abated or if the Stop Work Conference has been waived, or if, with the consent of the permittee or operator, the conference is held upon agreement later than 30 days after the notice or order was served. For purposes of R647-6-4.12:

4.12.111. The conference will be deemed waived if the permittee or operator:

4.12.111.A. Is informed, by written notice served in the manner provided in R647-6-102.3, that he or she will be deemed to have waived a conference unless he or she requests one within 30 days after service of the notice; and

4.12.111.B. Fails to request a conference within that time;

4.12.112. The written notice referred to in R647-6-4.12.111.A., will be served no later than five days after the notice or order is served on the permittee or operator; and

4.12.113. The permittee or operator will be deemed to have consented to an extension of the time for holding the conference if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

4.13. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the Stop Work Conference to the permittee or operator.

4.14. The Division will also post notice of the conference at the Division office closest to the mine site.

4.15. A Stop Work Conference will be conducted by a representative of the Division who may accept oral or written arguments and any other relevant information from any person attending.

4.16. Within five days after the close of the conference, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to the permittee or operator.

4.17. The granting or waiver of a conference will not affect the right of any person to have a conference in R647-7-106 or to have a formal review under Subsection 40-8-9(5). No evidence as to statements made or evidence produced at a Stop Work Conference will be introduced as evidence or to impeach a witness at formal review proceedings of that matter before the Board.

4.17.111. Any order or decision issued by the Division as a result of a conference as provided for under Subsection 40-8-9(5) and R647-6-102 including an order upholding the cessation order shall be a modification of the cessation order.

5. Inability to Comply.

5.11. No cessation order or notice of violation issued under R647-6 may be vacated because of inability to comply.

5.12. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R647-7 and of the duration of the suspension of a permit under R647-6.

KEY: minerals reclamation
2004
40-8-1 et seq.

▼ ▼

Natural Resources, Oil, Gas and Mining; Non-Coal
R647-7
Inspection and Enforcement: Civil Penalties

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27017
FILED: 03/26/2004, 10:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule adds in part, the necessary rulemaking for S.B. 159 from the 2002 General Session of the Utah Legislature. (DAR NOTE: S.B. 159 is found at UT L 2002 Ch 194, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: This proposed new rule adds a description of the civil penalties necessary to implement the inspection and enforcement provisions of S.B. 159.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is very little or no anticipated impact to the State budget from this new rule as the enforcement procedures currently in use by the Division and Board are more complex and require more administrative activity than is contemplated from the enforcement powers granted by S.B. 159. This new rule allows more efficient field activity. In either case, under the previous law or the revised one, if an operator exhibits poor environmental compliance, penalties may be assessed and collected at about the same cost. The amount of these collections is not quantifiable at this time due to an inability to predict future performance.

❖ LOCAL GOVERNMENTS: If local government chooses to operate a non-coal mine, it may be affected by this rule if compliance performance is substandard. Traditionally, however, mines are run by private industry, the effect on industry is outlined in the response to "Other persons" below.

❖ OTHER PERSONS: Others who may be affected by this rule are mining companies. While the rule in combination with other provisions authorizes the assessment of civil penalties, these penalties would be levied only in cases of noncompliance or malcompliance. Those additional costs are

not quantifiable at this time because it is difficult to predict future compliance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Industry compliance costs should not increase as a result of this rule since the standards for performance are not changing, only the method of enforcement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact for those businesses who are in full compliance with the reclamation program. Penalties will be assessed for those businesses who are not in compliance with the regulatory program.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/28/2004 at 10:00 AM, 1594 West North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-7. Inspection and Enforcement: Civil Penalties.
R647-7-101. Information on Civil Penalties.

1. Objectives. Civil penalties are assessed under Section 40-8-9.1 of the Utah Mined Land Reclamation Act and R647-7 to deter violations and to ensure maximum compliance with the terms and purposes of the Utah Mined Land Reclamation Act on the part of the minerals mining industry.

2. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R647-7 to determine whether a civil penalty will be assessed and the amount of the penalty.

R647-7-102. Penalty To Be Assessed.

1. The assessment officer will assess a penalty for each cessation order.

2. The assessment officer may assess a penalty for each notice of violation under the point system described in R647-7-103. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R647-7-103.

3. Within 15 days of service of a notice of violation or cessation order, the permittee or operator may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

R647-7-103. Point System for Penalties.

1. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

1.11. The permittee or operator's history of previous violations at the particular mining operation and reclamation, regardless of whether any led to a civil penalty assessment. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R647-7-103.2.11.111 or R647-7-103.2.11.112.

1.12. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit area.

1.13. The degree of fault of the permittee or operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

1.14. The permittee or operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement.

1.15. Consideration will also be given to whether the permittee or operator gained any economic benefit as a result of a failure to comply.

2. Assessment of Points.

2.11. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular mining operation and reclamation. Points will be assigned as follows:

2.11.111. A violation will not be counted, if the notice or order is the subject of pending administrative or judicial review, or if the time to request such review, or to appeal any administrative or judicial decision has not expired, and thereafter, it will be counted for only three years;

2.11.112. No violation for which the notice or order has been vacated will be counted; and

2.11.113. Each violation will be counted without regard to whether it led to a civil penalty assessment.

2.12. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

2.12.111. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following table:

TABLE 1

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

2.12.112. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

2.12.113. Alternative to R647-7-103.2.12.111 and R647-7-103.2.12.112, in the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R647-7-103.2.12.111 and R647-7-103.2.12.112, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

2.13. Degree of Fault.

2.13.111. The assessment officer will assign up to 30 points based on the degree of fault of the permittee or operator in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

2.13.111.A. A violation which occurs through no fault of the permittee or operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

2.13.111.B. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault. Fault means the failure of a permittee or operator to prevent the occurrence of any violation of his or her permit or any requirement of the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care; and

2.13.111.C. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

2.13.112. In calculating points to be assigned for degree of fault, the acts of all persons working at the mining operations on the mine site will be attributed to the permittee or operator, unless that permittee or operator establishes that they were acts of deliberate sabotage or acts of a third-party otherwise authorized to occupy the same lands.

2.14. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee or operator. Points will be assigned as follows:

2.14.111. Easy Abatement Situation. An easy abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

TABLE 2

DEGREE OF GOOD FAITH	POINTS
Immediate Compliance	-11 to -20
Rapid Compliance	- 1 to -10
Normal Compliance	0

2.14.112. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee or operator does not have the resources at hand to achieve compliance of the violated standard.

TABLE 3

DEGREE OF GOOD FAITH	POINTS
Rapid Compliance	-11 to -20
Normal Compliance	- 1 to -10
Extended Compliance	0

2.15. Definition of Compliance.

2.15.111. Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

2.15.112. Rapid Compliance requires evidence that the permittee or operator used diligence to abate the violation.

2.15.113. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

2.15.114. Extended Compliance means that the permittee or operator took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

2.16. The Effect on the permittee or operator's Ability to Continue in Business. Initially, it will be presumed that the permittee or operator's ability to continue in business will not be affected by the order of assessment. The permittee or operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee or operator's ability to continue in business. A reduction of the penalty, work in kind, or a special payment plan may be ordered if the information provided by the permittee or operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee or operator's ability to continue in business.

3. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R647-7-103.3 to a dollar amount, according to the following table:

TABLE 4

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440

21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950

4. Whenever a violation contained in a cessation order has not been abated, a civil penalty of not less than $750.00 will be assessed for each day during which such failure continues, except that, if the permittee or operator initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

4.11. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the Utah Mined Land Reclamation Act, after determination that the permittee or operator will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date specified in the Board final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

4.12. If the permittee or operator initiates review proceedings under the Utah Mined Land Reclamation Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the Utah Mined Land Reclamation Act, the extended period permitted for abatement will not end until the date specified in the court final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

R647-7-104. Waiver of Use of Formula to Determine Civil Penalty.

1. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R647-7-103 to set the civil penalty, if they determine that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

R647-7-105. Procedures for Assessment of Civil Penalties - Proposed Assessment.

1. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee or operator, by certified mail, within 30 days of the issuance of the notice or order.

1.11. If the mail is tendered at the address of the permittee or operator set forth in the permit application or at any address at which that permittee or operator is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R647-7-105.1 will be deemed to have been complied with upon such tender.

1.12. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee or operator:

1.12.111. Proves actual prejudice as a result of the delay; and

1.12.112. Makes a timely objection to the delay.

2. Unless a conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R647-7-105.1, within 30 days after the date the violation is abated.

R647-7-106. Procedures for Informal Conference.

1. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee or operator, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the permittee or operator.

2. Informal Conference Scheduling and Findings.

2.11. The Division will assign a conference officer to hold conferences. The conference will be informal. The conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee or operator proves actual prejudice as a result of the delay.

2.12. The Division will provide notice of the time and place of the conference to the operator or permittee and post notice of the conference at the main Division office at least five days before the conference. Any person may attend the conference.

2.13. The conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

2.13.111. Settle the issues, in which case a settlement agreement will be prepared and signed by the conference officer on behalf of the Division and by the permittee or operator;

2.13.112. Affirm, raise, lower, or vacate the penalty; or
2.13.113. Affirm, deny, modify or vacate the violation.
3. The conference officer will promptly serve the permittee or operator with a notice of his or her action in the manner provided in R647-7-105.1, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.
4. Informal Conference Settlement Agreement.
4.11. If a settlement agreement is entered into, the permittee or operator will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.
4.12. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R647-7-106.2.13.112 within 30 days from the date of the rescission.
5. The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee or operator is not diligently working toward resolution of the issues.
6. At formal review proceedings of the matter before the Board, no evidence as to statements made or evidence produced by one party at a conference will be introduced as evidence by another party or to impeach a witness.

R647-7-107. Requests for Formal Hearing.
1. A permittee or operator charged with a violation may contest the proposed penalty or the fact of the violation by submitting: (a) a petition to the Board; and (b) an amount equal to the proposed penalty (or, if a conference has been held, the reassessed or affirmed penalty) to the Division (to be held in escrow as provided in R647-7-107.2) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.
2. The Division will transfer all funds submitted under R647-7-107.1 to an escrow account pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R647-7-108.2 or R647-7-108.3.
3. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of R641, rules of practice and procedure before the Board.

R647-7-108. Final Assessment and Payment of Penalty.
1. If the permittee or operator fails to request a hearing as provided in R647-7-107, the proposed assessment or reassessment will become a final order of the Division and the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under Subsection 40-8-9.1(3)(e).
2. If any party requests judicial review of a final order of the Board, the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R647-7-108.3, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.
3. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R647-7, the Division will within 30 days of receipt of the order refund to the permittee or operator all or part of the escrowed amount and interest accumulated, if any.
4. If the review results in an order increasing the penalty, the permittee or operator will pay the difference to the Division within 15 days after the order is received by such permittee or operator.

KEY: minerals reclamation
2004
40-8-1 et seq.

Natural Resources, Oil, Gas and Mining; Non-Coal
R647-8
Inspection and Enforcement: Individual Civil Penalties

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27018
FILED: 03/26/2004, 10:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule adds in part, the necessary rulemaking for S.B. 159 from the 2002 General Session of the Utah Legislature. (DAR NOTE: S.B. 159 is found at UT L 2002 Ch 194, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: This proposed new rule adds a description of the individual civil penalties necessary to implement the inspection and enforcement provisions of S.B. 159.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is very little or no anticipated impact to the State budget from this new rule as the enforcement procedures currently in use by the Division and Board are more complex and require more administrative activity than is contemplated from the enforcement powers granted by S.B. 159. This new rule allows more efficient field activity. In either case, under the previous law or the revised one, if an operator exhibits poor environmental compliance, penalties may be assessed and collected at about the same cost. The amount of these collections is not quantifiable at this time due to an inability to predict future performance.
❖ LOCAL GOVERNMENTS: If local government chooses to operate a non-coal mine, it may be affected by this rule if compliance performance is substandard. Traditionally, however, mines are run by private industry, the effect on industry is outlined in the response to "Other persons" below.
❖ OTHER PERSONS: Others who may be affected by this rule are mining companies. While the rule in combination with other provisions authorizes the assessment of civil penalties, these penalties would be levied only in cases of

noncompliance or malcompliance. Those additional costs are not quantifiable at this time because it is difficult to predict future compliance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Industry compliance costs should not increase as a result of this rule since the standards for performance are not changing, only the method of enforcement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact for those businesses who are in full compliance with the reclamation program. Penalties will be assessed for those businesses who are not in compliance with the regulatory program.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/28/2004 at 10:00 AM, 1594 West North Temple, Suite 1050, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-8. Inspection and Enforcement: Individual Civil Penalties.
R647-8-101. Information on Individual Civil Penalties.

1. The rules in R647-8 provide guidance to exercise the authority set forth in Subsection 40-8-9.1(6).

2. Individual civil penalties will be assessed by a Division-appointed assessment officer using the process described in R647-8.

R647-8-102. When an Individual Civil Penalty May Be Assessed.

1. Except as provided in R647-8-102.2, the assessment officer may assess an individual civil penalty against any corporate director, officer, or agent of a permittee or operator, or any other person who may be liable under Section 40-8-9.1 who knowingly and willfully authorized, ordered or carried out a violation, failure, or refusal.

2. The assessment officer will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee or operator until a cessation order has been issued by the Division to the corporate permittee or operator for the violation, and the cessation order has remained unabated for 30 days.

R647-8-103. Amount of the Individual Civil Penalty.

1. In determining the amount of an individual civil penalty assessed under R647-8-102, the assessment officer will consider the criteria specified in Section 40-8-9.1, including:

1.11. The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular mining operation and reclamation;

1.12. The seriousness of the violation failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

1.13. The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure, or refusal.

2. The individual civil penalty will not exceed $5,000 for each violation. Each day of continuing violation may be deemed a separate violation and the assessment officer may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the Board, until abatement or compliance is achieved.

R647-8-104. Procedure for Assessment of Individual Civil Penalty.

1. Notice. The Division will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

2. Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Division 30 days after service upon the individual unless:

2.11. The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Board; or

2.12. The Division and the individual or responsible corporate permittee or operator agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

3. Service. Service of notice under R647-8-104 will satisfy the standard of R641, concerning the rules of practice and procedure before the Board.

R647-8-105. Payment of Penalty.

1. No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty will be due upon issuance of the final order.

2. Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with R641, the penalty will be due upon issuance of a final Board order affirming, increasing, or decreasing the proposed penalty.

3. Abatement agreement. Where the Board and the corporate permittee, operator, or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Board stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

4. Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties will result in referral to the Utah Attorney General for appropriate collection action.

KEY: minerals reclamation
2004
40-8-1 et seq.

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End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text (· · · · · ·) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends May 17, 2004. At its option, the agency may hold public hearings.

From the end of the waiting period through August 13, 2004, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Environmental Quality, Air Quality
R307-110-12
Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 26896
Filed: 04/01/2004, 12:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes is to respond to comments received from the Environmental Protection Agency (EPA).

SUMMARY OF THE RULE OR CHANGE: Changes are made throughout the State Implementation Plan for Carbon Monoxide for Provo, which is incorporated by reference under Section R307-110-12. The clarifications are extensive, and include adding inventory projections for 2004 and a specific allocation of the safety margin, but they do not change the substance of the original proposal. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the February 1, 2004, issue of the Utah State Bulletin, on page 12. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(c)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: State Implementation Plan Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None of the changes affect the cost to state government to implement the rule or plan. They are clarifications that do not affect the conclusions of the Plan, which indicate that Provo will remain in compliance with the federal health standard for carbon monoxide for at least the next 10 years without the use of oxygenated gasoline in the wintertime.
❖ LOCAL GOVERNMENTS: No changes are made that affect local governments. The changes in the text are clarifications that do not affect the conclusions drawn in the Plan as it was first proposed.
❖ OTHER PERSONS: None of the changes in the rule or plan affect the cost to other persons. They are clarifications that do not affect the conclusions of the Plan, which are that Provo will remain in compliance with the federal health standard for carbon monoxide for at least the next 10 years without the use of oxygenated gasoline in the wintertime.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None of the changes in the rule or plan affect the cost to affected persons. They are clarifications that do not affect the conclusions of the Plan, which are that Provo will remain in compliance with the federal health standard for carbon monoxide for at least the next 10 years without the use of oxygenated gasoline in the wintertime.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No changes are made that affect costs to business.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program, particulate matter, ozone
2004
Notice of Continuation March 27, 2002
19-2-104(3)(e)

Environmental Quality, Air Quality
R307-110-31
Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 26898
Filed: 04/01/2004, 12:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendments is to respond to comments received from the Environmental Protection Agency (EPA).

SUMMARY OF THE RULE OR CHANGE: The date of adoption by the Air Quality Board is changed from April 7 to March 31, 2004, because the Board re-scheduled its meeting. Changes are made to respond to comments throughout the State Implementation Plan for the general requirements for vehicle emissions inspection and maintenance program, which is incorporated by reference under Section R307-110-31. The clarifications do not change the substance of the original proposal. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the February 1, 2004, issue of the Utah State Bulletin, on page 13. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(c)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: State Implementation Plan Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None of the changes affect the cost to state government to implement the rule and plan, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.
❖ LOCAL GOVERNMENTS: No changes are made that affect local governments, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.
❖ OTHER PERSONS: None of the changes in the rule or plan affect the cost to other persons, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None of the changes in the rule or plan affect the cost to affected persons, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No changes are made that affect costs to business.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on [~~April 7~~]March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program, particulate matter, ozone
2004
Notice of Continuation March 27, 2002
19-2-104(3)(e)

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Environmental Quality, Air Quality
R307-110-34
Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 26899
Filed: 04/01/2004, 12:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendments is to respond to comments received from the Environmental Protection Agency (EPA).

SUMMARY OF THE RULE OR CHANGE: The date of adoption by the Air Quality Board is changed from April 7 to March 31, 2004, because the Board re-scheduled its meeting. Changes are made to respond to comments throughout the State Implementation Plan for the requirements for the vehicle emissions inspection and maintenance program for Utah County, which is incorporated by reference under Section R307-110-34. The clarifications do not change the substance of the original proposal. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the February 1, 2004, issue of the Utah State Bulletin, on page 14. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(c)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: State Implementation Plan Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None of the changes affect the cost to state government to implement the rule and plan, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.
❖ LOCAL GOVERNMENTS: No changes are made that affect local governments, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.
❖ OTHER PERSONS: None of the changes in the rule or plan affect the cost to other persons, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None of the changes in the rule or plan affect the cost to affected persons, because the changes are minor clarifications that do not change how the vehicle inspection and maintenance plans are operated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No changes are made that affect costs to business.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2004

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-34. Section X, Vehicle Inspection and Maintenance Program,, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on [~~April 7~~]March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program, particulate matter, ozone
2004
Notice of Continuation March 27, 2002
19-2-104(3)(e)

Environmental Quality, Water Quality
R317-401
Graywater Systems

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 26797
Filed: 03/30/2004, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are in response to comments received and considered during the public comment period in December 2003.

SUMMARY OF THE RULE OR CHANGE: The proposed changes are either editorial in nature or are made to clarify portions of the original rule in response to public comments. A new definition "bedroom" was added at Section R317-401-2, clarifying language was added at several places in Sections R317-401-1 and R317-401-4, and a table at Section R317-401-6 was re-formatted for increased readability. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the

December 15, 2003, issue of the Utah State Bulletin, on page 21. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The proposed changes are of an editorial nature or are made to clarify language proposed in the original rule filing in response to public comments. No cost or savings to state budget are anticipated.
❖ LOCAL GOVERNMENTS: The proposed changes are of an editorial nature or are made to clarify language proposed in the original rule filing in response to public comments. No cost or savings to local government are anticipated.
❖ OTHER PERSONS: The proposed changes are of an editorial nature or are made to clarify language proposed in the original rule filing in response to public comments. No cost or savings to other persons are anticipated beyond those outlined in the original rule filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed changes are of an editorial nature or are made to clarify language proposed in the original rule filing in response to public comments. No additional compliance costs are anticipated beyond those outlined in the original rule filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes are of an editorial nature or are made to clarify language proposed in the original rule filing in response to public comments. No cost impacts to businesses are anticipated beyond those outlined in the original rule filing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
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:
Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/17/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 05/21/2004

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
R317-401. Graywater Systems.
R317-401-1. General.

(a) This rule shall apply to the construction, installation, modification and repair of graywater systems for subsurface landscape irrigation for single-family residences.

(b) Nothing contained in this rule shall be construed to prevent the permitting local health department from:

(i) adopting stricter requirements than those contained herein;

(ii) prohibiting graywater systems; and

(iii) assessment of fees for administration of graywater systems.

(c) Graywater shall not be:

(i) applied above the land surface;

(ii) applied to vegetable gardens except where graywater is not likely to have direct contact with the edible part, whether the fruit will be processed or not;

(iii) allowed to surface; or

[~~system or any waters of the State.~~](iv) discharged directly into or reach any storm sewer system or any waters of the State.

(d) It shall be unlawful for any person to construct, install or modify, or cause to be constructed, installed or modified any graywater system in a building or on a given lot without first obtaining a permit to do such work from the local health department.

(e) The local health department may require the graywater system in its jurisdiction, be placed under:

(i) an umbrella of a management district for the purposes of operation, maintenance and repairs,

(ii) a third-party operation, maintenance and repair contract at the expense of the permittee with a requirement of notification by the permittee and the contractor to the local health department, of the termination of such services.

R317-401-2. Definitions.

(a) "Graywater" is untreated wastewater, which has not come into contact with toilet waste. Graywater includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, laundry tubs, etc., and does not include wastewater from kitchen sinks, photo lab sinks, dishwashers, garage floor drains, or other hazardous chemicals.

(b) Surfacing of graywater means the ponding, running off, or other release of graywater to or from the land surface.

(c) "The local health department" means a city-county or multi-county local health department established under Title 26A, which has been given approval by the Utah Water Quality Board to issue permits for graywater systems within its jurisdiction.

(d) "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

R317-401-3. Administrative Requirements.

(a) The local health department having jurisdiction must obtain approval from the Utah Water Quality Board to administer a graywater systems program, as outlined in this section, before permitting graywater systems.

(b) The local health department request for approval must include a description of its plan to properly manage these systems to protect public health. This plan must include:

(i) Documentation of:

(1) the adequacy of staff resources to manage the increased work load;

(2) the technical capability to administer the new systems including any training plans which are needed;

(3) the Local Board of Health and County Commission support this request; and

(4) the county's legal authority to implement and enforce correction of malfunctioning systems and its commitment to exercise this authority.

(ii) An agreement to:

(1) advise the owner of the system of the type of system, and information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements;

(2) advise the building permitting agency of the approved graywater system on the property;

(3) provide oversight of installed systems;

(4) record the existence of the system on the deed of ownership for that property;

(5) issue a renewable operating permit at a frequency not exceeding five years with inspection of the permitted systems before renewal; or, inspect annually the greater of 20 per cent of all installed system or the minimum of ten installed systems; and

(6) maintain records of all installed systems, failures, modifications, repairs and all inspections recording the condition of the system at the time of inspection such as, but not limited to, overflow, surfacing, ponding and nuisance.

R317-401-4. Permitting or Approval Requirements.

(a) Designer certified at Level 3, in accordance with the requirements of R317-11, shall design the graywater systems.

(b) The local health department may require the following information with or in the plot plan before a permit is issued for a graywater system:

(i) plot plan drawn to scale, completely dimensioned, showing lot lines and structures, direction and slope of the ground, location of all present or proposed retaining walls, drainage channels, water supply lines, wells, paved areas and structures on the plot, other utilities, easements, number of bedrooms and plumbing fixtures plan in each structure, location of onsite wastewater system and replacement area of the onsite wastewater system, or building sewer connecting to a public sewer, and location of the proposed graywater system;

(ii) a log of soil formations and identification of the maximum anticipated ground water level as determined by the minimum of one test hole, dug in close proximity, two feet below the bottom of the subsurface irrigation field or drip irrigation area together with a statement of types of soil[~~water absorption characteristics of the soil~~] based on soil classification at the proposed site. Soil and groundwater evaluations will be conducted by professionals fulfilling the requirements of R317-11;

(iii) details of construction necessary to ensure compliance with the requirements of this rule together with full description of the complete installation including installation methods, construction and materials, as required by the local health department; and

(iv) other pertinent information the local health department may deem appropriate.

(c) The installed graywater system shall be operated only after receiving a written approval or an authorization from the local health department after the local health department has made the final construction inspection.

(d) The local health department will require written operation and maintenance procedures including checklists and maintenance instructions from the designer.

(e) No graywater system, or part thereof, shall be located on any lot other than the lot which is the site of the building or structure which discharges the graywater unless, when approved by the local health department, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot.

(f) Onsite wastewater systems existing or to be constructed on a given lot shall comply with the requirements of R317-4 or more restrictive local requirements. The capacity of the onsite wastewater system, including required future areas, shall not be decreased by the existence or proposed installation of a graywater system servicing a given lot.

(g) No potable water connection will be made to [~~T~~]the graywater system [~~shall not be connected to any potable water system~~]without an air gap or a reduced pressure principle backflow prevention assembly for cross connection control, in accordance with R309-105.

(h) When abandoning a graywater system,

(i) the owner of the real property on which such system is located shall render it safe by having the surge tank pumped out only in a manner approved by the health department;

(ii) the surge tank shall be filled completely with earth, sand or gravel within 30 days;

(iii) the surge tank may also be removed within 30 days, at the owner's discretion;

(iv) the approving local health department shall be notified at least 30 days before the planned abandonment.

R317-401-5. Design of Graywater Systems.

(a) The basis of design for a graywater system shall be as follows:

TABLE 1
Basis of Design

Number of Bedrooms	Flow, gallons per day
Minimum two bedrooms	120
Three bedrooms	160
Each additional bedroom	40

(b) No graywater system or part thereof shall be located at any point having less than the minimum distances indicated as follows:

TABLE 2
Separation Distances

Minimum Horizontal Distance (in feet) From	Surge Tank	Subsurface or Drip Irrigation Field
Buildings or Structures (1)	5 feet (2)	2 feet
Property line adjoining private property	5 feet	5 feet
Public Drinking Water Sources (3)	(4)	(4)
Non-public Drinking Water Sources		
Protected (grouted)source	50 feet	100 feet
Unprotected (ungrouted)source	50 feet(5)	200 feet(5)
Streams, ditches and lakes (3)	25 feet	100 feet(6)
Seepage pits	5 feet	10 feet

Absorption System and replacement area	5 feet	10 feet
Septic tank	none	5 feet
Culinary water supply line	10 feet	10 feet(7)

Footnotes:
(1) Including porches and steps, whether covered or uncovered, but does not include carports, covered walks, driveways and similar structures.
(2) For above ground tanks the local health department may allow less than five feet separation.
(3) As defined in R309
(4) Recommended separation distances will comply with the Source Water Protection requirements R309-600 and 605.
(5) Recommended separation distance may increase at the discretion of the local health department for adequate public health protection.
(6) Lining or enclosing watercourse or location above irrigation area may justify reduced separation at the discretion of the local health department.
(7) For parallel construction or for crossing requires an approval of the local health department.

(c) Surge Tank

(i) Plans for surge tanks shall include dimensions, structural, bracing and connection details, and a certification of structural suitability for the intended installation from the manufacturer.

(ii) Surge tanks shall be:

(A) at least 250 gallons in volumetric capacity to provide settling of solids, accumulation of sludge and scum unless justified with a mass balance of inflow and outflow and type of distribution for irrigation;

(B) vented to the surface with a locking, gasketed access opening, or approved equivalent, to allow for inspection and cleaning;

(C) constructed of structurally durable materials to withstand all expected physical forces, and not subject to excessive corrosion or decay;

(D) watertight;

(E) anchored against overturning;

(F) installed below ground on dry, level, well compacted soil; in a dry well on compacted soil; or above ground on a level, four-inch thick concrete slab;

(G) Permanently marked showing the rated capacity, and "GRAYWATER IRRIGATION SYSTEM, DANGER - UNSAFE WATER" on the unit;

(H) provided with an overflow pipe:

(I) of diameter at least equal to that of the inlet pipe diameter;

(II) connected permanently to sanitary sewer or to septic tank; and

(III) equipped with a check valve, not a shut-off valve - to prevent backflow from sewer or septic tank.

(I) provided with a drain pipe of diameter at least equal to that of the inlet pipe diameter;

(J) provided with a vent pipe in conformance with the requirements of the International Plumbing Code; and

(K) provided with unions and fittings for all piping in conformance with the requirements of the International Plumbing Code.

(d) Valves and Piping

(i) Graywater piping discharging into a surge tank or having a direct connection to a sanitary drain or sewer piping shall be downstream of an approved water seal type trap(s) If no such trap(s) exists, an approved vented running trap shall be installed upstream of the connection to protect the building from any possible waste or sewer gases.

(ii) Vents and venting shall meet the requirements of the International Plumbing Code.

(iii) All graywater piping shall be marked or shall have a continuous tape marked with the words: DANGER - UNSAFE WATER.[~~Purple colored pipe is required, as specified in R317-1.~~]

(iv) All valves, including the three-way valve, shall be readily accessible.

(v) The design shall include necessary types of valves for isolation storage tank, irrigation zones and connection to a sanitary sewer or an onsite wastewater system.

R317-401-6. Irrigation Fields.

(a) Each irrigation zone shall have a minimum effective irrigation area for the type of soil and absorption characteristics.

(b) The area of the irrigation field shall be equal to the aggregate length of the perforated pipe sections within the irrigation zone times the width of the proposed trench. The required square footage shall be determined as follows:

[~~TABLE~~

~~Soil Characteristics~~	~~Subsurface Irrigation System Loading, Gallons per day per square foot~~	~~Drip Irrigation System Maximum emitter discharge, gallons per day~~	~~Minimum number of emitters per gallon per day of graywater~~
~~Coarse Sand or gravel~~	~~5~~	~~1.8~~	~~0.6~~
~~Fine Sand~~	~~4~~	~~1.4~~	~~0.7~~
~~Sandy Loam~~	~~2.5~~	~~1.2~~	~~0.9~~
~~Sandy Clay~~	~~1.6~~	~~0.9~~	~~1.1~~
~~Clay with considerable sand or gravel~~	~~1.1~~	~~0.6~~	~~1.6~~
~~Clay with sand or gravel~~	~~0.8~~	~~0.5~~	~~2.0~~]

TABLE 3
Subsurface Irrigation Field Design

Soil Characteristics	Subsurface Irrigation Field area Loading, gallons of graywater per day per square foot
Coarse Sand or gravel	5
Fine Sand	4
Sandy Loam	2.5
Sandy Clay	1.6
Clay with considerable sand or gravel	1.1
Clay with sand or gravel	0.8

TABLE 4
Drip Irrigation System Design

Soil Characteristics	Drip Irrigation System Maximum emitter discharge, gallons per day	Minimum number of emitters per gallon per day of graywater
Coarse Sand or gravel	1.8	0.6
Fine Sand	1.4	0.7
Sandy Loam	1.2	0.9
Sandy Clay	0.9	1.1
Clay with considerable sand or gravel	0.6	1.6
Clay with sand or gravel	0.5	2.0

(c) No irrigation point shall be within two vertical feet of the maximum groundwater table. The applicant shall supply evidence of ground water depth to the satisfaction of the local health department.

(d) Subsurface drip irrigation system.

(i) Minimum 140 mesh (115 micron) filter with a capacity of 25 gallons per minute, or equivalent filtration, sized appropriately to maintain the filtration rate, shall be used.

(ii) The filter backwash and flush discharge shall be captured, contained and disposed of to the sewer system, septic tank, or, with approval of the local health department, in a dry well sized to accept all the backwash and flush discharge water. Filter backwash water and flush water shall not be used for any purpose. Sanitary procedures shall be followed when handling filter backwash and flush discharge of graywater.

(iii) Emitters recommended by the manufacture shall be resistant to root intrusion, and suitable for subsurface and graywater use.

(iv) Each irrigation zone shall be designed to include no less than the number of emitters specified in this rule.

(v) Minimum spacing between emitters should be 14 inches in any direction, or as recommended by the manufacturer.

(vi) The system design shall provide user controls, such as valves, switches, timers, and other controllers as appropriate, to rotate the distribution of graywater between irrigation zones.

(vii) All drip irrigation supply lines shall be:

(A) polyethylene tubing or PVC class 200 pipe or better and schedule 40 fittings;

(B) With solvent-cemented joints, inspected and pressure tested at 40 pounds per square inch and shown to be drip tight for five minutes, before burial; and

(C) buried at a minimum depth of six inches. Drip feeder lines can be polyethylene or flexible PVC tubing and shall be covered to a minimum depth of six inches.

(viii) Where pressure at the discharge side of the pump exceeds 20 pounds per square inch, a pressure-reducing valve able to maintain downstream pressure no greater than 20 pounds per square inch shall be installed downstream from the pump and before any emission device.

(ix) Each irrigation zone shall include a flush valve/anti-siphon valve to prevent back siphonage of water and soil.

(e) Subsurface Irrigation Field

(i) Perforated sections shall be a minimum three-inch diameter and shall be constructed of perforated high-density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other approved materials, provided that sufficient openings are available for distribution of the graywater in the trench area. Material, construction and perforation of the piping shall be in compliance with the requirements of the International Plumbing Code.

(ii) Clean stone, gravel, or similar filter material acceptable to the local health department, and varying in size from 3/4 inch to 2 1/2 inches, shall be placed in the trench to the depth and grade required by this section. Perforated sections shall be laid on the filter material. The perforated sections shall then be covered with filter material to the minimum depth required by this section. The filter material shall then be covered with landscape filter fabric or similar porous material to prevent closure of voids with earth backfill.

(iii) No earth backfill shall be placed over the filter material cover until after inspection and approval of the local health department.

(iv) Subsurface Irrigation fields shall be constructed as follows:

TABLE 5
Subsurface Irrigation Field Construction Details

Description	Minimum	Maximum
Number of drain lines per subsurface irrigation zone	one	---
Length of each perforated line, feet	---	100
Bottom width of trench, inches	6	18
Total depth of trench, inches	12	---
Spacing of lines, center to center, feet	4	---
Depth of earth cover on top of gravel, inches	4	---
Depth of filter material cover over lines, inches	2	---
Depth of filter material beneath lines, inches	3	---
Grade of perforated lines, Inches per 100 feet	Level	4

(f) Construction, Inspection and Testing

(i) Installation shall conform to the equipment and installation methods described in the approved plans.

(ii) The manufacturer of all system components shall be properly identified.

(iii) Surge tanks shall be filled with water to the overflow line prior to and during construction inspection. All seams and joints shall be left exposed and the tank shall remain watertight.

(iv) The irrigation field shall be installed in the area which has soils similar to the soils which have been evaluated, and has absorption rate corresponding to the given soil classification.

(v) A graywater stub-out may be allowed for future construction, provided it is capped prior to the connection to the installed irrigation lines and landscaping. Stub-out shall be permanently marked: GRAYWATER STUB-OUT, DANGER UNSAFE WATER.

(vi) A flow test shall be performed throughout the system, from surge tank to the point of graywater irrigation. All lines and components shall be watertight.

KEY: wastewater, graywater, drip irrigation
2004
19-5

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-54
Speech-Language Pathology Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27012
FILED: 03/23/2004, 15:20

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 26-1-5 which grants the Utah Department of Health the power to adopt, amend, or rescind rules which shall have the force and effect of law. In addition, Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules. Furthermore, 42 CFR 440.110 authorizes diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist.

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 or oral 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: This rule should be continued in order to provide speech-language pathology services to eligible Medicaid clients for whom the services are medically necessary.

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

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

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 03/23/2004

Insurance, Administration
R590-195
Rental Car Related Licensing Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 27011
FILED: 03/19/2004, 15:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner of Insurance to make rules to

implement the provisions of the Insurance Code. The subsections of the Code that this rule seeks to implement are: Subsections 31A-23a-106(2)(d), which specifies car rental related insurance as a limited line insurance type; Subsection 31A-23a-110(1), which gives the commissioner the authority to prescribe the form in which licenses shall be issued; and Subsection 31A-23a-113(3), which gives specific rulemaking authority to the commissioner in prescribing the license renewal and reinstatement procedures. In compliance with this authority, the rule defines "car rental related insurance" and sets forth the conditions for obtaining and renewing a rental car-related license.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments 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 is needed to support and give direction to the licensing process for car rental-related insurance. This is a unique line of insurance and requires separate treatment from a traditional insurance agency. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 03/19/2004

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF EXPIRED RULES

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

Human Services

Child and Family Services

No. 27014 (filed 03/25/2004 at 1:07 p.m.): R512-3. Procedures for Establishing Policy.
Enacted or Last Five-Year Review: 11/05/98 (No. 21466, NEW, filed 09/15/98 at 1:00 p.m., published 10/01/98)
Extended Due Date: 03/04/2004
Expired Date: 03/04/2004

End of the Notices of Expired Rules 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
Plant Industry
No. 26949 (AMD): R68-20-1. Authority.
Published: March 1, 2004
Effective: April 1, 2004

Corrections
Administration
No. 26769 (REP): R251-101. Corrections Advisory Council Bylaws.
Published: December 1, 2003
Effective: March 24, 2004

Environmental Quality
Water Quality
No. 26796 (AMD): R317-1. Definitions and General Requirements.
Published: December 1, 2003
Effective: March 29, 2004

No. 26903 (AMD): R317-8. Utah Pollutant Discharge Elimination System (UPDES).
Published: February 1, 2004
Effective: March 30, 2004

Human Services
Administration, Administrative Services, Licensing
No. 26925 (AMD): R501-2. Core Standards.
Published: February 15, 2004
Effective: March 17, 2004

Insurance
Administration
No. 26806 (CPR): R590-220. Submission of Accident and Health Insurance Filings.
Published: February 15, 2004
Effective: March 24, 2004

No. 26806 (NEW): R590-220. Submission of Accident and Health Insurance Filings.
Published: December 15, 2003
Effective: March 24, 2004

No. 26821 (CPR): R590-225. Submission of Property Casualty Rate and Form Filings.
Published: February 15, 2004
Effective: March 24, 2004

No. 26821 (NEW): R590-225. Submission of Property and Casualty Rate and Form Filings.
Published: December 15, 2003
Effective: March 24, 2004

Natural Resources
Parks and Recreation
No. 26948 (AMD): R651-611. Fee Schedule.
Published: March 1, 2004
Effective: April 1, 2004

Water Rights
No. 26814 (NEW): R655-13. Stream Alteration.
Published: December 15, 2003
Effective: March 25, 2004

Public Safety
Fire Marshal
No. 26938 (AMD): R710-6-1. Adoption, Title, Purpose and Scope.
Published: March 1, 2004
Effective: April 1, 2004

Public Service Commission
Administration
No. 26849 (CPR): R746-100. Practice and Procedure Governing Formal Hearings.
Published: March 1, 2004
Effective: April 1, 2004

No. 26849 (AMD): R746-100. Practice and Procedure Governing Formal Hearings.
Published: January 1, 2004
Effective: April 1, 2004

Transportation
Preconstruction, Right-of-Way Acquisition
No. 26893 (AMD): R933-2-3. Definitions.
Published: February 1, 2004
Effective: March 23, 2004

Workforce Services
Employment Development
No. 26932 (AMD): R986-100-134. Payments of Assistance Pending the Hearing.
Published: February 15, 2004
Effective: April 1, 2004

No. 26934 (AMD): R986-200. Family Employment Program.
Published: February 15, 2004
Effective: April 1, 2004

No. 26933 (AMD): R986-700. Child Care Assistance.
Published: February 15, 2004
Effective: April 1, 2004

Workforce Information and Payment Services

No. 26921 (AMD): R994-102. Purpose of Employment Security Act.
Published: February 15, 2004
Effective: April 4, 2004

No. 26922 (REP): R994-103. Approval of Counsel Fees.
Published: February 15, 2004
Effective: April 4, 2004

No. 26923 (REP): R994-104. Prosecution.
Published: February 15, 2004
Effective: April 4, 2004

No. 26928 (AMD): R994-201. Definition of Terms in Employment Security Act.
Published: February 15, 2004
Effective: April 4, 2004

No. 26930 (R&R): R994-404. Wage Freeze Following Workers' Compensation.
Published: February 15, 2004
Effective: April 4, 2004

No. 26924 (AMD): R994-406. Appeal Procedures.
Published: February 15, 2004
Effective: April 4, 2004

No. 26929 (R&R): R994-508. Appeal Procedures.
Published: February 15, 2004
Effective: April 4, 2004

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 1, 2004, including notices of effective date received through April 1, 2004, the effective dates of which are no later than April 15, 2004. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
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	26693	R156-56	AMD	01/01/2004	2003-21/7
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	26693	R156-56	AMD	01/01/2004	2003-21/7
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
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Workforce Services, Employment Development	26707	R986-700	AMD	01/01/2004	2003-21/83
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Health, Health Systems Improvement, Child Care Licensing	26824	R430-2	AMD	04/12/2004	2003-24/25
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	26693	R156-56	AMD	01/01/2004	2003-21/7
	26866	R156-56	NSC	01/01/2004	Not Printed
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
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driver education Public Safety, Driver License	26894	R708-2	AMD	03/04/2004	2004-3/27
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Environmental Quality, Air Quality	26940	R307-415	5YR	02/09/2004	2004-5/45
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Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
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Workforce Services, Employment Development	26934	R986-200	AMD	04/01/2004	2004-4/35
	26704	R986-200	AMD	02/02/2004	2003-21/77
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Public Safety, Fire Marshal	26795	R710-2	AMD	01/02/2004	2003-23/65
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Natural Resources, Wildlife Resources	26659	R657-13	AMD	01/02/2004	2003-20/28
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Natural Resources, Water Rights	26844	R655-11	NSC	01/01/2004	Not Printed
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Education, Administration	26829	R277-724	NEW	01/15/2004	2003-24/11
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	26818	R657-17-4	AMD	01/21/2004	2003-24/55
	26867	R657-33	AMD	02/24/2004	2004-2/3
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	26875	R432-3	5YR	01/05/2004	2004-3/45
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	26804	R501-16	AMD	04/12/2004	2003-24/29
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Agriculture and Food, Animal Industry	26990	R58-20	5YR	03/05/2004	2004-7/36
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Agriculture and Food, Plant Industry	26794	R68-7-6	NSC	01/01/2004	Not Printed
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Insurance, Administration	26787	R590-102	AMD	01/08/2004	2003-23/39
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Transportation, Administration	26878	R907-64	5YR	01/05/2004	2004-3/49
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Health, Epidemiology and Laboratory Services, Laboratory Services	26968	R438-13	5YR	02/27/2004	2004-6/61
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Public Safety, Fire Marshal	26788	R710-9	AMD	01/02/2004	2003-23/72
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	26917	R156-5a	5YR	01/27/2004	2004-4/74
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	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
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	26834	R156-38	AMD	02/03/2004	2004-1/5
	26915	R156-39a	5YR	01/27/2004	2004-4/75
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	26693	R156-56	AMD	01/01/2004	2003-21/7
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	26692	R156-56-707	AMD	01/01/2004	2003-21/34
	26888	R156-63	AMD	03/04/2004	2004-3/5
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Commerce, Occupational and Professional Licensing	26834	R156-38	AMD	02/03/2004	2004-1/5
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Environmental Quality, Air Quality	26939	R307-214	5YR	02/09/2004	2004-5/44
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Commerce, Occupational and Professional Licensing	26915	R156-39a	5YR	01/27/2004	2004-4/75
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	27012	R414-54	5YR	03/23/2004	2004-8/97
	26803	R414-54	AMD	01/28/2004	2003-24/14
	26809	R414-99	NEW	02/17/2004	2003-24/15
	26811	R414-300	NEW	02/10/2004	2003-24/17
	26781	R414-304	AMD	01/01/2004	2003-23/29
	26810	R414-310	AMD	02/10/2004	2003-24/18
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peer review					
Commerce, Occupational and Professional Licensing	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
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Natural Resources, Wildlife Resources	26820	R657-42	AMD	01/21/2004	2003-24/61
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permitting authority					
Environmental Quality, Air Quality	26941	R307-417	5YR	02/09/2004	2004-5/45
personal property					
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
pharmacies					
Commerce, Occupational and Professional Licensing	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
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Commerce, Occupational and Professional Licensing	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
podiatric physician					
Commerce, Occupational and Professional Licensing	26917	R156-5a	5YR	01/27/2004	2004-4/74
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Commerce, Occupational and Professional Licensing	26917	R156-5a	5YR	01/27/2004	2004-4/74
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Commerce, Occupational and Professional Licensing	26916	R156-37c	5YR	01/27/2004	2004-4/74
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Health, Health Care Financing, Coverage and Reimbursement Policy	26810	R414-310	AMD	02/10/2004	2003-24/18
primary care network					
Health, Health Care Financing, Coverage and Reimbursement Policy	26811	R414-300	NEW	02/10/2004	2003-24/17
private security officers					
Commerce, Occupational and Professional Licensing	26888	R156-63	AMD	03/04/2004	2004-3/5
professional competency					
Education, Administration	26827	R277-502	AMD	01/15/2004	2003-24/6

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professional engineers					
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professional geologists					
Commerce, Occupational and Professional Licensing	26777	R156-76-102	AMD	01/20/2004	2003-23/14
professional land surveyors					
Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
professional staff					
Education, Administration	26828	R277-486	NEW	01/15/2004	2003-24/5
property casualty insurance filing					
Insurance, Administration	26821	R590-225	CPR	03/24/2004	2004-4/64
	26821	R590-225	NEW	03/24/2004	2003-24/38
property tax					
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
prosecution					
Workforce Services, Workforce Information and Payment Services	26923	R994-104	REP	04/04/2004	2004-4/41
public buildings					
Public Safety, Fire Marshal	26920	R710-4	EMR	01/28/2004	2004-4/66
	26793	R710-4	AMD	01/02/2004	2003-23/67
public education					
Education, Administration	26871	R277-437	5YR	01/05/2004	2004-3/42
	26850	R277-462	AMD	02/05/2004	2004-1/16
	26870	R277-735	5YR	01/05/2004	2004-3/43
public funds					
Money Management Council, Administration	26676	R628-19	CPR	02/10/2004	2004-1/38
	26676	R628-19	NEW	02/10/2004	2003-20/27
public input in policy					
Human Services, Child and Family Services	27014	R512-3	NSC	03/04/2004	Not Printed
	26774	R512-3	NSC	03/04/2004	Not Printed
public utilities					
Public Service Commission, Administration	26849	R746-100	CPR	04/01/2004	2004-5/36
	26849	R746-100	AMD	04/01/2004	2004-1/28
	26883	R746-365	5YR	01/06/2004	2004-3/49
radiology practical technician					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
radiology practical technicians					
Commerce, Occupational and Professional Licensing	26580	R156-54-302b	CPR	01/20/2004	2003-24/70

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radiology technologists					
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rates					
Labor Commission, Industrial Accidents	26697	R612-4-2	AMD	01/01/2004	2003-21/64
real estate appraisals					
Commerce, Real Estate	26890	R162-105	5YR	01/13/2004	2004-3/42
real estate brokers					
Commerce, Real Estate	26835	R162-7-3	AMD	02/18/2004	2004-1/9
reclamation					
Natural Resources, Oil, Gas and Mining; Coal	26710	R645-301-100	AMD	02/06/2004	2003-22/34
	26711	R645-301-500	AMD	02/06/2004	2003-22/35
	26712	R645-303-200	AMD	02/06/2004	2003-22/36
	26713	R645-401	AMD	02/06/2004	2003-22/38
recreation					
Natural Resources, Wildlife Resources	26819	R657-38	AMD	01/21/2004	2003-24/56
rehabilitation					
Education, Rehabilitation	26873	R280-202	5YR	01/05/2004	2004-3/44
reimbursement					
Health, Health Care Financing, Coverage and Reimbursement Policy	26854	R414-9	NEW	02/03/2004	2004-1/26
replacement providers					
Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
reports					
Education, Administration	26688	R277-484	NSC	01/01/2004	Not Printed
Environmental Quality, Air Quality	26942	R307-150	5YR	02/09/2004	2004-5/43
reservoirs					
Natural Resources, Water Rights	26844	R655-11	NSC	01/01/2004	Not Printed
residential mortgage loan origination					
Commerce, Real Estate	26837	R162-202	AMD	02/03/2004	2004-1/10
	26909	R162-203	AMD	04/12/2004	2004-4/7
	26908	R162-204	AMD	04/12/2004	2004-4/8
	26907	R162-205	AMD	04/12/2004	2004-4/9
	26840	R162-206	NEW	02/03/2004	2004-1/12
	26839	R162-207	NEW	02/03/2004	2004-1/13
	26836	R162-208	NEW	02/03/2004	2004-1/14
	26906	R162-209	AMD	04/12/2004	2004-4/10
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Transportation, Administration	26878	R907-64	5YR	01/05/2004	2004-3/49

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Public Safety, Driver License	26894	R708-2	AMD	03/04/2004	2004-3/27
Public Service Commission, Administration	26849	R746-100	CPR	04/01/2004	2004-5/36
	26849	R746-100	AMD	04/01/2004	2004-1/28
	26780	R746-200-6	AMD	01/07/2004	2003-23/76
safety					
Labor Commission, Safety	26674	R616-2-3	AMD	01/01/2004	2003-20/25
Transportation, Motor Carrier	26880	R909-3	5YR	01/05/2004	2004-3/50
school					
Education, Administration	26961	R277-601	5YR	02/26/2004	2004-6/59
school buses					
Transportation, Motor Carrier	26880	R909-3	5YR	01/05/2004	2004-3/50
school lunch program					
Education, Administration	26830	R277-720	AMD	01/15/2004	2003-24/10
school transportation					
Education, Administration	26961	R277-601	5YR	02/26/2004	2004-6/59
schools					
Public Safety, Driver License	26894	R708-2	AMD	03/04/2004	2004-3/27
SDWA					
Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19
securities					
Money Management Council, Administration	26676	R628-19	NEW	02/10/2004	2003-20/27
	26676	R628-19	CPR	02/10/2004	2004-1/38
securities regulation					
Commerce, Securities	26481	R164-11-2	AMD	01/05/2004	2003-15/17
	26481	R164-11-2	CPR	01/05/2004	2003-23/83
security guards					
Commerce, Occupational and Professional Licensing	26888	R156-63	AMD	03/04/2004	2004-3/5
services					
Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
settlement					
Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
shorthand reporter					
Commerce, Occupational and Professional Licensing	26927	R156-74	5YR	02/02/2004	2004-4/75
signs					
Transportation, Preconstruction, Right-of-Way Acquisition	26892	R933-2-3	EMR	01/14/2004	2004-3/39
	26893	R933-2-3	AMD	03/23/2004	2004-3/37

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solid waste management					
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speed limits					
Regents (Board Of), University of Utah, Administration	26914	R805-1	5YR	01/27/2004	2004-4/76
stream alterations					
Natural Resources, Water Rights	26814	R655-13	NEW	03/25/2004	2003-24/43
surplus property					
Administrative Services, Fleet Operations, Surplus Property	26843	R28-3	AMD	02/12/2004	2004-1/4
surveyors					
Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed
suspension					
Transportation, Administration	26720	R907-67	NEW	01/05/2004	2003-22/50
taxation					
Tax Commission, Auditing	26957	R865-7H	5YR	02/25/2004	2004-6/63
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
telecommunications					
Public Service Commission, Administration	26826	R746-348-6	AMD	04/13/2004	2003-24/65
	26785	R746-350	NEW	01/15/2004	2003-23/79
	26883	R746-365	5YR	01/06/2004	2004-3/49
telephone utility regulation					
Public Service Commission, Administration	26826	R746-348-6	AMD	04/13/2004	2003-24/65
time					
Labor Commission, Adjudication	26772	R602-1	AMD	01/02/2004	2003-23/46
title insurance					
Insurance, Administration	26792	R590-187	AMD	01/08/2004	2003-23/44
transportation					
Transportation, Administration	26720	R907-67	NEW	01/05/2004	2003-22/50
transportation safety					
Transportation, Motor Carrier	26823	R909-1	AMD	03/01/2004	2003-24/66
trucks					
Transportation, Motor Carrier	26823	R909-1	AMD	03/01/2004	2003-24/66
Transportation, Motor Carrier, Ports of Entry	26881	R912-14	5YR	01/05/2004	2004-3/51
unemployment compensation					
Workforce Services, Workforce Information and Payment Services	26921	R994-102	AMD	04/04/2004	2004-4/38
	26922	R994-103	REP	04/04/2004	2004-4/40

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	26930	R994-404	R&R	04/04/2004	2004-4/43
	26924	R994-406	AMD	04/04/2004	2004-4/45
	26929	R994-508	R&R	04/04/2004	2004-4/51
utility service					
Public Service Commission, Administration	26780	R746-200-6	AMD	01/07/2004	2003-23/76
waste disposal					
Environmental Quality, Solid and Hazardous Waste	26972	R315-320	5YR	03/01/2004	2004-6/61
Environmental Quality, Water Quality	26796	R317-1	AMD	03/29/2004	2003-23/16
water funding					
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water policy					
Natural Resources, Water Resources	26784	R653-5	AMD	01/07/2004	2003-23/59
water pollution					
Environmental Quality, Water Quality	26796	R317-1	AMD	03/29/2004	2003-23/16
	26242	R317-2	CPR	01/06/2004	2003-18/35
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	26903	R317-8	AMD	03/30/2004	2004-3/19
water quality standards					
Environmental Quality, Water Quality	26242	R317-2	AMD	01/06/2004	2003-10/27
	26242	R317-2	CPR	01/06/2004	2003-18/35
weather modification					
Natural Resources, Water Resources	26784	R653-5	AMD	01/07/2004	2003-23/59
wildlife					
Natural Resources, Wildlife Resources	26817	R657-5	AMD	01/21/2004	2003-24/46
	26659	R657-13	AMD	01/02/2004	2003-20/28
	26818	R657-17-4	AMD	01/21/2004	2003-24/55
	26867	R657-33	AMD	02/24/2004	2004-2/3
	26819	R657-38	AMD	01/21/2004	2003-24/56
	26778	R657-41	AMD	01/05/2004	2003-23/61
	26820	R657-42	AMD	01/21/2004	2003-24/61
wildlife conservation					
Natural Resources, Wildlife Resources	26819	R657-38	AMD	01/21/2004	2003-24/56
wildlife law					
Natural Resources, Wildlife Resources	26659	R657-13	AMD	01/02/2004	2003-20/28
wildlife permits					
Natural Resources, Wildlife Resources	26778	R657-41	AMD	01/05/2004	2003-23/61
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Labor Commission, Adjudication	26772	R602-1	AMD	01/02/2004	2003-23/46

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workers' compensation					
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Workforce Services, Workforce Information and Payment Services	26930	R994-404	R&R	04/04/2004	2004-4/43
working toward employment					
Workforce Services, Employment Development	26706	R986-400	AMD	01/01/2004	2003-21/81
youth					
Human Services, Administration, Administrative Services, Licensing	26804	R501-16	AMD	04/12/2004	2003-24/29