UTAH STATE BULLETIN

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Kimberly K. Hood, Executive Director
Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402, *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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SPECIAL NOTICES

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EXECUTIVE ORDER

Wildland Fire Management

WHEREAS; the danger from wildland fires is extremely high throughout the State of Utah;

WHEREAS; wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment;

WHEREAS; some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

WHEREAS; immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment;

WHEREAS, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981,

NOW, THEREFORE I, Jon M. Huntsman, Jr., Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of May 10, 2009 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of May 2009

(State Seal)

Jon M. Huntsman
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2009/0003

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for June 2009 Medicaid Rate Changes

Effective June 1, 2009, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at: http://health.utah.gov/medicaid/stplan/bcrp.htm

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 April 16, 2009, 12:00 a.m., and May 1, 2009, 11:59 p.m. are included in this, the May 15, 2009, 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 between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. 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 June 15, 2009. 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 63G-3-302 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 September 12, 2009, 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 seven calendar days after the close of the public comment period 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 Section 63G-3-301; and Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Administrative Services, Finance
R25-5
Payment of Per Diem to Boards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32632
FILED: 04/30/2009, 17:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 45 was passed in the 2009 General Legislative Session which amended Section 63A-3-106. The proposed changes to Rule R25-5 address those amendments. (DAR NOTE: H.B. 45 (2009) is found at Chapter 25, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The change clarifies that employees of higher education will be paid at the rates established in the rule unless higher education pays the cost. Also, reimbursement for expenses related to official board meetings will only be paid in those cases where compensation has not already been made by another entity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The effect to the state budget will be negligible. There may be minor cost savings if agencies are more careful to ensure that board members who are otherwise compensated are not reimbursed twice.

❖ LOCAL GOVERNMENTS: This rule amendment applies only to monies paid to employees of state government and higher education and, therefore, will have no impact on local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule amendment applies only to monies paid to employees of state government and higher education and, therefore, will have no impact on small business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include staffing expense required to approve and process per diem payments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are for clarification purposes and have no impact on business. Kimberly Hood, Executive Director

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

ADMINISTRATIVE SERVICES
FINANCE
Room 2110 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:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Kimberly K Hood, Executive Director

R25. Administrative Services, Finance.
R25-5. Payment of Per Diem to Boards.
R25-5-1. Purpose.

The purpose of this rule is to establish the procedures for payment of per diem and travel expenses[~~to policy boards, advisory boards, councils, or committees within state government.~~] to defray the costs for attendance at an official meeting of a board by an officer or employee who is a member.

R25-5-2. Authority.

This rule is established pursuant to Section 63A-3-106, which authorizes the Director of Finance to make rules establishing per diem rates.

R25-5-3. Definitions.

All terms are as defined in Section 63A-3-106(1), except as follows:[~~(1) "Boards" means policy boards, advisory boards, councils, or committees within state government.~~]

([~~2~~]1) "Finance" means the Division of Finance.

([~~3~~]2) "Per diem" means an allowance paid daily.

([~~4~~]3) "Rate" means an amount of money.

([~~5~~]4) "Independent Corporation Board" means the board of directors of any independent corporation subject to Section 63E Chapter 2 that is subject to this rule by its authorizing statute.

R25-5-4. Rates.

(1) Each member of a board within state government shall receive $60 per diem for each official meeting attended that lasts up to four hours and $90 per diem for each official meeting that is longer than four hours.

(a) These rates are applicable to an officer or employee of the executive branch, except as provided under subsection (1)(b);

(b) These rates are applicable to an officer or employee of higher education unless higher education pays the costs of the per diem.

(2) Travel expenses shall also be paid to board members in accordance with Rule R25-7.

(3) Members may decline to receive per diem and/or travel expenses for their services.

(4) Upon approval by Finance, members of an independent corporation board may receive per diem, at rates exceeding those established in Subsection R25-5-4(1), for each meeting attended as part of their official duties and for reasonable preparation associated with meetings of the full board or the board's subcommittees.

R25-5-5. [~~Rates for State Employees.~~]Governmental Employees.

(1) [~~Full-time state employees serving on boards may not be eligible for per diem at board meetings held during normal working hours.~~]A member of a board may not receive per diem or travel expenses if the member is being compensated as an officer or employee of a governmental entity, including the State, while performing the member's service on the board.

[~~State~~]Governmental employee board members attending official meetings held at a time other than their normal working hours, who receive no compensation or leave (such as comp time) for the additional hours of the meetings[~~, shall~~] may receive [~~$60~~]per diem[~~ for each official meeting attended that lasts up to four hours and $90 per diem for each official meeting that is longer than four hours~~].

(2) Travel expenses [~~shall also be paid to state employees serving on boards~~]related to the attendance of official board meetings for which a governmental employee serving on the board is not otherwise reimbursed may also be paid to the employee in accordance with Rule R25-7.

(3) Governmental employees may decline to receive per diem and/or travel expenses for their services.

KEY: per diem allowance, rates, state employees, boards
Date of Enactment or Last Substantive Amendment: [~~January 25, 2006~~]2009
Notice of Continuation: April 29, 2008
Authorizing, and Implemented or Interpreted Law: 63A-3-106

♦ ♦

Administrative Services, Finance
R25-7
Travel-Related Reimbursements for State Employees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32635
FILED: 04/30/2009, 17:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to: 1) modify the definition of "board" to agree to the amendment to the same definition in Section 63A-3-106; and 2) to clarify the in-state travel approval process.

SUMMARY OF THE RULE OR CHANGE: The rule is being revised to change the definition of board to agree with the amended definition of "board" in Section 63A-3-106 and to include the approval of in-state travel reimbursement forms as accepted documentation of approval.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63A-3-106 and 63A-3-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment clarifies the existing rule and has no effect to state budgets.

❖ LOCAL GOVERNMENTS: This amendment clarifies the existing rule and has no effect on local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment clarifies the existing rule and has no effect on small business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment clarifies the existing rule and has no associated compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are for clarification purposes and have no impact on business. Kimberly Hood, Executive Director

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

ADMINISTRATIVE SERVICES
FINANCE
Room 2110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
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DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Kimberly K Hood, Executive Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to [~~adopt~~]make rules [~~covering~~]governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules establishing per diem rates[~~ to meet subsistence expenses for attending official meetings~~].

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board[~~s~~]" means a[~~policy~~] board[~~s~~], [~~advisory boards~~]commission, council[~~s~~], [~~or~~]committee[~~s~~], task force, or similar body established to perform a governmental function.[~~ within state government.~~]

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Per diem" means an allowance paid daily.

(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(7) "Rate" means an amount of money.

(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "State employee" means any person who is paid on the state payroll system.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the department head or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 36 cents per mile or 50.5 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 50.5 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 36 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 36 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director that he is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, he must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that his insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 75 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: [~~July 1, 2008~~]2009
Notice of Continuation: April 29, 2008
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

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Agriculture and Food, Regulatory Services

R70-940

Standards and Testing of Motor Fuel

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32570
FILED: 04/28/2009, 15:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to allow flexibility for motor fuel manufacturers to meet federal requirements for alternative fuel quotas.

SUMMARY OF THE RULE OR CHANGE: The changes set standards for up to 10% ethanol blended gasolines to be used statewide between June 1 and September 15 each calendar year; removes the requirement for the exact percentage of ethanol to be posted on the fuel dispenser and replaces it with the statement that the fuel contains up to 10% ethanol, and allows the standards to be waived in the event of a fuel shortage caused by the standards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-33-4

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no impact on the state budget. Our weights and measures inspectors already test gasoline for ethanol content.

❖ LOCAL GOVERNMENTS: The rule places no responsibilities on local government. There should be no cost or savings to them.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The rule provides significant savings to retailers by reducing the signage requirements. This was not able to be calculated by the industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The refineries are already set up to do the required testing. No costs have been identified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will reduce the financial burden on industry by giving them flexibility to meet the new federal mandates. Also, the signage requirements have been relaxed, and are less labor intensive. Leonard M. Blackham, Commissioner

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

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Richard W Clark, Kyle Stephens, Kathleen Mathews, or Brett Gurney at the above address, by phone at 801-538-7150, 801-538-7102, 801-538-7103, or 801-538-7158, by FAX at

801-538-7126, 801-538-7126, 801-538-7126, or 801-538-7126, or by Internet E-mail at RICHARDWCLARK@utah.gov, kylestephens@utah.gov, kmathews@utah.gov, or bgurney@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R70. Agriculture and Food, Regulatory Services.
R70-940. Standards and Testing of Motor Fuel.
R70-940-2. Standards.

Motor fuels are to meet the following standards:

A. "Octane." (R+M)/2. ASTM D-4814 (ASTM - American Standard of Testing Materials).

B. "Vapor Pressure." ASTM D-323 on Reid Vapor Pressure and ASTM's Information Document on Oxygenated Fuels, Section 4.2.1.

C. "Distillation." ASTM D-86 and ASTM revised D-4814 relative to alcohol blends (along with ASTM's Information Document on Oxygenated Fuels). Additionally, Gasoline and Gasoline-Ethanol Blends shall meet the following requirements:

(1) The most recent version of ASTM D 4814, "Standard Specification for Automotive Spark--Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall meet but not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes rules promulgated by the State, and Federally-approved State Implementation Plans (SIP's)). Gasoline blended with ethanol shall be blended under any of the following three options:

(a) The base gasoline used in such blends shall meet the requirements of ASTM D 4814 and shall have a minimum distillation temperature of 77 deg C (170 deg F) at 50 volume percent evaporated, or

(b) The base gasoline shall meet the requirements of ASTM D 4814 and the blend shall have a minimum distillation temperature of 66 deg C (150 deg F) at 50 volume percent evaporated, or

(c) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the requirements of ASTM D 4814, except for vapor pressure.

(2) Blends of gasoline containing 9-10 percent ethanol shall not exceed the ASTM D 4814 vapor pressure limits by more than 1.0 psi from June 1 through September 15 of each calendar year. Gasoline containing less than 9 percent ethanol by volume must comply with D4814 vapor pressure limits during the period. Gasoline containing up to 10 percent ethanol by volume shall not exceed the ASTM D 4814 vapor pressure limits by more than 1.0 psi from September 16 through May 31 of successive years.

D. "Water Tolerance." ASTM D-4814.

E. "Phase Separation." Must be homogenous, no phase separation.

F. "Corrosivity." ASTM D-4814.

G. "Benzene." ASTM D-3606.

H. "Flash Point." ASTM D-93 or D-56.

I. "Gravity." ASTM D-1298.

J. "Sulfur." (X-ray method) ASTM D-2622, 1266, 1552, 2622 or 4294.

K. "Aromatics." ASTM D-1319.

L. "Leads." ASTM D-3237.

M. "Cloud point." ASTM D-2500.

N. "Conductivity." ASTM D-2624.

O. "Cetane" ASTM D-976 or 4737.

P. "Cosolvents." Methanol or ethanol based fuels shall include such cosolvents as are required to increase the water tolerance of the finished gasoline blend to the level specified in R70-940-2-D above.

Q. "Method of Operation." Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment.

R. "Maintenance of Equipment." All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating condition throughout the period of such service.

S. "Product Storage Identification." The fill connection for any petroleum product storage tank or vessel supplying retail motor fuel devices shall be permanently, plainly, and visibly marked as to product contained. When the fill connection device is marked by means of color code, the color key shall be conspicuously displayed at the place of business.

R70-940-3. Labels.

All motor fuel kept, offered or exposed for sale or sold containing at least one percent by volume [~~methanol or~~]ethanol [~~or ethers~~]must be labeled in a prominent, conspicuous manner," [~~"% METHANOL", ~~]"This fuel contains up to 10% ETHANOL"[~~, or "% ETHERS"~~].

A. Letters on the label must be at least 1 1/2 inches high and in contrasting colors.

B. Labels must be located on the face of each dispenser near the area designating the grade of the product.

R70-940-8. Fuel Shortage.

The Commissioner of Agriculture and Food may waive the standard in R70-940-2(C)for a county if there is sufficient evidence that a motor fuel shortage is imminent and the standard is determined to be a primary cause.

KEY: inspections, motor fuel
Date of Enactment or Last Substantive Amendment: [~~February 12, 2002~~]2009
Notice of Continuation: August 29, 2006
Authorizing, and Implemented or Interpreted Law: 4-33-4

Alcoholic Beverage Control, Administration
R81-1-2
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32542
FILED: 04/23/2009, 12:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement S.B. 187. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Since S.B. 187 defines the terms "bar" and "counter" in statute, and eliminates the need for the term "member", this amendment will delete those terms from the rule.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The amendment merely removes definitions that are found in statute.

❖ LOCAL GOVERNMENTS: None--The amendment merely removes definitions that are found in statute.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The amendment merely removes definitions that are found in statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Removing the definitions from the rule will have no cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no fiscal impact on businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-2. Definitions.

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

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

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

~~(3)~~](2) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

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

~~(5)~~](3) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

[~~(6)~~](4) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

[~~(7)~~](5) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

[~~(8)~~](6) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

[~~(9)~~](7) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

[~~(10)~~](8) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

[~~(11)~~](9) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

[~~(12)~~](10) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

[~~(13)~~](11) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

[~~(14) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association.~~

~~(15)~~](12) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

[~~(16)~~](13) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

[~~(17)~~](14) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

[~~(18)~~](15) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

[~~(19)~~](16) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

[~~(20)~~](17) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

[~~(21)~~](18) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~March 24,~~]2009
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

♦ ♦

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32544
FILED: 04/23/2009, 12:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement provisions of S.B. 187. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 eliminated the need to affix a state labels on alcoholic beverage products sold in state liquor stores and package agencies. This amendment deletes that requirement in the rule.

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) anticipates a savings of approximately $950,000 each year as a result of S.B. 187's elimination of the need for the department to affix state labels to all alcohol products sold. This rule amendment will not change that amount.

❖ LOCAL GOVERNMENTS: None--Liquor is sold only in state outlets. Local governments are not impacted by the elimination of the state label requirement.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are approximately 100 package agencies in Utah contracted to sell alcoholic beverages at resorts and in remote areas. These operations are small. They will no longer be required to affix the state label on the alcoholic products they sell. Though it is impossible to estimate what the savings in manhours will be, there will almost certainly be some savings to the operators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs brought about by this rule amendment. Any fiscal impact will be in savings, not costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Affixing state labels has been costly to the state in both funds and personnel injuries. DABC is pleased that the legislature eliminated the need for these labels and that there will be no compliance costs incurred by businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, 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)~~](1) 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)~~](2) 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)~~](3) 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, or on the department's website at http://www.abc.utah.gov.

[~~(5)~~](4) 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, package agent, or any other person.

[~~(6)~~](5) Returned Checks.

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

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (6)(a) 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.

(c) In addition to the remedies listed in Subsection (6)(b), the department shall require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis under the following guidelines:

(i) Except as provided in Subsection (6)(c)(ii):

(A) two or more returned checks received by the department from or on behalf of a licensee, permittee, or package agent within three consecutive months shall require that the licensee, permittee, or package agent be on "cash only" status for a period of three to six consecutive months from the date the department received notice of the second returned check;

(B) one returned check received by the department from or on behalf of a licensee, permittee, or package agent within six consecutive months after the licensee, permittee, or package agent has come off "cash only" status shall require that the licensee, permittee, or package agent be returned to "cash only" status for an additional period of six to 12 consecutive months from the date the department received notice of the returned check;

(C) one returned check received by the department from or on behalf of a licensee, permittee, or package agent at any time after the licensee, permittee, or package agent has come off "cash only" status for a second time shall require that the licensee, permittee, or package agent be on "cash only" for an additional period of 12 to 24 consecutive months from the date the department received notice of the returned check;

(D) a returned check received by the department from or on behalf of an applicant for a license, permit, or package agency for either an application or initial license or permit fee shall require that the applicant be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(E) a returned check received by the department from or on behalf of a licensee or permittee for a license or permit renewal fee shall require that the licensee or permittee be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(ii) a returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit shall require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission that are conducted within a period of up to18 consecutive months from the date the department received notice of the returned check;

(iii) in instances where the department has discretion with respect to the length of time a licensee, permittee, or package agent is on "cash only" status, the department may take into account:

(A) the dollar amount of the returned check(s);

(B) the length of time required to collect the amount owed the department;

(C) the number of returned checks received by the department during the period in question; and

(D) the amount of the licensee, permittee, or package agency bond on file with the department in relation to the dollar amount of the returned check(s).

(iv) for purposes of this Subsection (6)(c), a licensee, permittee, or package agent that is on "cash only" status may make payments to the department in cash, with a cashier's check, or with a current debit card with an authorized pin number; and

(v) the department may immediately remove a licensee, permittee, or package agent from "cash only" status if it is determined that the cause of the returned check was due to bank error, and was not the fault of the person tendering the check.

(d) In addition to the remedies listed in Subsections (6)(a), (b) and (c), the department may pursue any legal remedies to effect collection of any returned check.

[~~(7)~~](6) 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

Date of Enactment or Last Substantive Amendment: [~~March 24,~~]2009

Notice of Continuation: August 31, 2006

Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

Alcoholic Beverage Control, Administration
R81-1-9
Liquor Dispensing Systems

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32549
FILED: 04/23/2009, 15:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement S.B. 187 passed by the 2009 legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This amendment removes the prohibition that a licensee shall not sell or serve a brand of liquor that is not identical to that ordered by the patron, and shall not misrepresent the brand of liquor contained in a drink. These provisions are being removed because they are now contained in statute at Subsections 32A-12-219(3)(b)(iii) and (iv).

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The amendment merely removes a provision that is now in statute.
❖ LOCAL GOVERNMENTS: None--The amendment merely removes a provision that is now in statute.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The amendment merely removes a provision that is now in statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendment removes a provision that is now in statute and involves no additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no fiscal impact on businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-9. Liquor Dispensing Systems.

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

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

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces; and

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

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

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

(3) Method of approval.

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

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

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request,

samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

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

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

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

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

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

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

[~~(j) A licensee or his employee shall not:~~

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

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

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

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

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

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~March 24,~~]2009
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

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Alcoholic Beverage Control, Administration

R81-1-24

Responsible Alcohol Service Plan

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32552
FILED: 04/27/2009, 09:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to delete a definition that is now found in statute.

SUMMARY OF THE RULE OR CHANGE: The definition of "intoxication" is now found in statute at Subsection 32A-1-105(28). The definition is being deleted from the section because is it now in statute.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The definition of intoxication, though somewhat modified, is merely being moved from rule to statute.

❖ LOCAL GOVERNMENTS: None--The definition of intoxication is merely being moved from rule to statute.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The definition of intoxication is merely being moved from rule to statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The definition of intoxication is merely eing moved from rule to statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Moving the definition of intoxication from rule to statute should have no fiscal impact on businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" [~~means a person who is actually, apparently, or obviously under the influence of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of alcoholic beverages or said substances, to a degree that the person may endanger himself or another.~~]are as defined in 32A-1-105(28).

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~March 24,~~]2009
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

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Alcoholic Beverage Control, Administration

R81-1-25

Sexually-Oriented Entertainers and Stage Approvals

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32553
FILED: 04/27/2009, 09:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to change the words "class D private" club to "social" club. This change of language is brought about by the passage of S.B. 187. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 changed the names of the classifications of clubs in Utah. What were once class D private clubs are now social clubs. Therefore, the terminology is being corrected in this section.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The nature of the club has not changed, just the name of the classification. There will be no cost or savings as a result.

❖ LOCAL GOVERNMENTS: None--State law classifies clubs for the purpose of providing guidelines and restrictions by which the Department of Alcoholic Beverage Control (DABC) regulates these licensees. The guidelines and restrictions do not apply to local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Though some private clubs have few employees, most clubs will remain within the same category as before S.B. 187 passed and changing the title of the club classification will have no fiscal impact on these establishments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Most clubs will keep the same classification as before the passage of S.B. 187 and, therefore, will experience no fiscal impact by the change of classification title.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: DABC does not anticipate that the change of classification title proposed in this amendment will have any fiscal impact on businesses in Utah. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or [~~class D private~~]social club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or [~~class D private~~]social club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32A-1- 105(54).

(b) "Sexually-oriented entertainer" means a person defined in 32A-1-105(55).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or [~~class D private~~]social club.

(b) A tavern or [~~class D private~~]social club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or [~~class D private~~]social club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or [~~class D private~~]social club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or [~~class D private~~]social club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~March 24,~~]2009
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

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Alcoholic Beverage Control, Administration
R81-3-13
Operational Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32554
FILED: 04/27/2009, 11:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B.187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Subsection 32A-3-106(9)(c)(ii) specifically authorizes the Alcoholic Beverage Control (ABC) Commission to define what constitutes a package agency that sells liquor "in a manner similar to a state store." The ABC Commission has determined that package agencies of type 2 (sells liquor in conjunction with another business) and type 3 (sells only liquor) sell liquor in a way similar to a state store. Package agency types 1, 4, and 5 do not sell liquor in a manner similar to a state store. As a result of new provisions passed in S.B. 187, package agency types 1, 4, and 5 may now sell liquor on Sundays and legal holidays. This proposed rule amendment establishes clear guidelines for sales and restrictions on Sundays and legal holidays in all types of package agencies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsection 32A-3-106(9)(c)(ii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may potentially be some revenues generated into the state's coffers since package agencies buy their liquor from the Department of Alcohlic Beverage Control and any additional sales on Sundays and legal holidays will mean income for the state. It is not possible at this point to determine what that amount may be.

❖ LOCAL GOVERNMENTS: Added sales days for package agencies may increase sales and, consequently, increase taxes paid to local governments. It is not possible to know what the tax increase may be.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Most of our package agencies are small businesses. For those that can remain open on Sundays and legal holidays there is potential to increase revenues. What those revenues will be cannot be estimated at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any additional compliance costs involved in this rule amendment. Package agencies are already established and running and nothing more will be required of them to remain open on Sundays and legal holidays.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It has been very inconvenient for package agencies in resort areas and wineries to close on Sundays and legal holidays. These are the days when these agencies stand to have the most business. Permitting them to be open to accommodate their patrons on those busy days should make a big difference, not only in revenues, but in customer satisfaction. Dennis R. Kellen, Director

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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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

[~~(e) A package agency, regardless of type, shall not operate on Sundays or legal holidays except to the extent authorized by 32A-3-106(10) for package agencies located in certain wineries. If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by Type 2 and 3 package agencies.~~](e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by 32A-3-106(9) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries; and

(B) a package agency held by a resort licensee that does not sell liquor in a manner similar to a state store which includes a Type 1, 4, and 5 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

[~~(f) Because Type 2 and 3 package agencies operate in manner similar to a state store, they may not be open to sell liquor on election days until after the polls have closed. Type 1,4, and 5 package agencies do not operate in a manner similar to a state store and may remain open to sell liquor on elections days.~~

~~——~~](2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009

Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107, 32A-3-106(9)(c)(ii)

Alcoholic Beverage Control, Administration
R81-4A-2
Application

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32555
FILED: 04/27/2009, 11:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement H.B. 352 which was passed by the 2009 State Legislature. (DAR NOTE: H.B. 352 (2009) is found at Chapter 190, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: H.B. 352 created a "conditional" license for full and limited-service restaurant applicants. This rule amendment adds a subsection that provides for the applicants of those licenses to be considered for a conditional license. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32556 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--There will be no additional fees charged, nor a notable increase in work load for the Department of Alcoholic Beverage Control (DABC) staff members to implement the conditional license provisions of the new law.
❖ LOCAL GOVERNMENTS: None--This amendment only involves DABC's licensing department and does not involve local government agencies.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--There will be no additional costs applied when applicants apply for a conditional license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no additional compliance costs since the conditional license application does not carry additional fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Getting a liquor license can mean the difference between success and failure for a restaurant. This rule amendment enables applicants for restaurant licenses to secure a license even if they have not yet received local licensing. This is an invaluable asset, especially when restaurant licenses have reached quota and are no longer readily available. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-2. Application.

[~~A~~](1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32A-4-102, -103, and -105 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32A-1-107(5).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-4A-10
Table Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32557
FILED: 04/27/2009, 13:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions of S.B. 187 which was passed by the 2009 State Legislature.

(DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 provides for service at a counter and grandfathered bar structure, as well as a table, in a restaurant. This rule is written to add counters and grandfathered bar structures to the service areas in restaurants and to clarify provisions for the service of beer and heavy beer in sealed containers in those service areas. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32558 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Licensed restaurants have always been authorized to sell beer and heavy beer. This rule merely clarifies the service of those products at a patron's table, counter, or grandfathered bar structure. This clarification will not affect the state budget.

❖ LOCAL GOVERNMENTS: None--The service of beer and heavy beer in restaurants is regulated by the DABC and does not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Small businesses holding restaurant licenses are already authorized to sell beer and heavy beer. This rule simply clarifies how those products may be served to patrons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Implementing this rule will have no added compliance costs to restaurant owners. The rule amendment clarifies the provision for service of beer and heavy beer in restaurants at a patron's table, counter, or grandfathered bar structure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: When a patron orders a can or bottle of beer or heavy beer, proper etiquette mandates that the server should open and pour the beer in front of the patron. This rule amendment permits this practice though other alcoholic beverages may not be dispensed at a patron's table or counter. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron[~~, provided the wine has an official state label affixed~~]. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-4A-11
Consumption at Patron's Table

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32559
FILED: 04/27/2009, 15:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement provisions of S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment adds counters and grandfathered bar structures to the areas in a restaurant where alcoholic beverages may be consumed. It also deletes language that prohibits tables, counters, and grandfathered bar structures from being in an area where liquor is stored or dispensed. Finally, the amendment eliminates the need for a state label on containers of alcoholic beverage sold in restaurants. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32560 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment simply clarifies where patrons may be seated and where alcoholic beverages may be dispensed and stored. There is no cost or savings to the state as a result of this rule amendment.
❖ LOCAL GOVERNMENTS: None--This rule deals with issues surrounding alcohol storage, dispensing, and consumption in restaurants. This does not affect local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Many restaurants are small businesses, but none of the provisions of this rule amendment will have a fiscal impact on their operations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no compliance costs in eliminating the need for state labels on alcoholic beverage containers nor for having the ability to store and dispense alcoholic beverages from their grandfathered bar structure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact on businesses as a result of this rule amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

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

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

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

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-4A-15
Grandfathered Bar Structures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32561
FILED: 04/28/2009, 08:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The amendment adds a new section to Rule R81-4A. S.B. 187 made extensive changes in how restaurants may operate with bar structures on the premises. This rule amendment defines the terms "actively engaged in the construction of the restaurant" and "remodels the grandfathered bar structure". (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32562 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsections 32A-4A-106(7)(a)(i)(B)(I)(Bb) and 32A-4A-106(7)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There may be a potential cost to the state budget if restaurants decided to remodel their grandfathered bar structure as defined by this rule amendment. Each restaurant that remodels its grandfathered bar structure may apply for credit for purchases of liquor from state stores and package agencies for the actual remodeling cost up to $30,000. There is no way of knowing how many restaurants will remodel their bar structure and apply for this liquor credit. S.B. 187 limits the aggregate of credits available to $1,000,000 and limits the time frame within which the restaurant must apply for the credit.
❖ LOCAL GOVERNMENTS: None--The provisions in S.B. 187 deal specifically with regulations of the Department of Alcoholic Beverage Control, and not with local government regulations.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Even for those small restaurants that may choose to remodel their bar structure and apply for the liquor credit, the

credit will only be for the cost of the remodel, therefore, these restaurants will realize neither a cost nor savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no compliance costs associated with this proposed rule amendment. The rule simply defines terms from S.B. 187. Restaurants that have bar structures will receive a grandfather of the bar structure. Those who do not have bar structures will not be permitted to build a bar structure in the future. Therefore, there will be no compliance costs one way or the other.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because it is desirable to many restaurant owners to have a working bar structure in their establishment, it is not anticipated that many restaurant owners will choose to remodel their bar structure to take advantage of the liquor credit option in S.B. 187. Therefore, it is not anticipated that this bill or the rule amendment will have a fiscal impact on many businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-15. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32A-4-106(7)(a)(i) which provides that:

(i) a bar structure, as defined in 32A-1-105(4), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32A-4-106(7)(a)(ii) which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32A-4-106(7)(a)(i)(B)(I)(Bb) and 32A-4-106(7)(a)(ii) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32A-4-106(7)(a)(ii) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32A-4-106(6), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-4-106(7)(a)(i)(B)(I)(Bb); 32A-4-106(7)(a)(ii)

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Alcoholic Beverage Control, Administration
R81-4C-2
Application

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32563
FILED: 04/28/2009, 12:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement H.B. 352 which was passed by the 2009 State Legislature. (DAR NOTE: H.B. 352 (2009) is found at Chapter 190, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: H.B. 352 created a "conditional" license for full and limited-service restaurant applicants. This rule amendment adds a subsection that provides for the applicants of those licenses to be considered for a conditional license. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32564 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--There will be no additional fees charged, nor a notable increase in work load for the Department of Alcoholic Beverage Control (DABC) staff members to implement the conditional license provision of the new law.

❖ LOCAL GOVERNMENTS: None--This amendment only involves DABC's licensing department and does not involve local government agencies.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--There will be no additional fees applied when applicants apply for a conditional licensing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no additional compliance costs since the conditional license application does not carry additional fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Getting a liquor license can mean the difference between success and failure for a restaurant. This rule amendment enables applicants for restaurant licenses to secure a license even if they have not yet received local licensing. This is an invaluable asset, especially when restaurant licenses have reached quota and are no longer readily available. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-2. Application.

[~~A~~](1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a limited restaurant license when the requirements of Sections 32A-4-303, -304, and -306 have been met, a completed application has been received by the department, and the limited restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32A-1-107(5).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

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Alcoholic Beverage Control, Administration
R81-4C-9
Table Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32567
FILED: 04/28/2009, 14:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions of S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 provides for service at a counter and grandfathered bar structure, as well as a table, in restaurants. This amendment is written to add counters and grandfathered bar structures to the service areas in restaurants and to clarify provisions for the service of beer and heavy beer in sealed containers in those service areas. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32568 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Licensed restaurants have always been authorized to sell beer and heavy beer. This rule merely clarifies the service of those products at a patron's table, counter, or grandfathered bar structure.

❖ LOCAL GOVERNMENTS: None--The service of beer and heavy beer in restaurants is regulated by the DABC and does not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Small businesses holding restaurant licenses are already authorized to sell beer and heavy beer. This rule simply clarifies how and where those products may be served.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Implementing this rule amendment will have no added compliance costs to restaurant owners. The amendment clarifies the provision for service of beer and heavy beer in restaurants at a patron's table, counter, or grandfathered bar structure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment sets guidelines for the service of beer and heavy beer in limited-service restaurants. There will be no added fiscal impact as a result of this rule amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-9. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the limited restaurant or carried in by a patron[~~, provided the wine has an official state label affixed~~]. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-4C-10
Consumption at Patron's Table

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32569
FILED: 04/28/2009, 15:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment adds counters and grandfathered bar structures to the areas in a restaurant where alcoholic beverages may be consumed. It also deletes language that prohibits tables, counters, and grandfathered bar structures from being in an area where liquor is stored or dispensed. Finally, the amendment eliminates the need for a state label on containers of alcoholic beverage sold in restaurants. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32571 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This amendment simply clarifies where patrons may be seated and where alcoholic beverages may be dispensed and stored. It also eliminates the need for state labels on bottles of wine and heavy beer sold in

restaurants. There will be no cost or savings to the state budget if these rule amendments are made.

❖ LOCAL GOVERNMENTS: None--This rule amendment deals with issues surrounding alcohol storage, dispensing, and consumption in restaurants. This does not affect local ordinances or local government agencies.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Many restaurants are small businesses. This rule amendment deals with alcohol storage, dispensing, and consumption. No part of the amendment will have a fiscal impact on their operations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There will be no compliance costs involved in eliminating the need for state labels on liquor containers nor for a restaurant owner being authorized to store and dispense alcoholic beverages from a grandfathered bar structure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No part of this rule amendment will create a fiscal impact on businesses in Utah. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-10. Consumption at Patron's Table, Counter, and Grandfathered Bar Structure".

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

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

~~(3) All wine and heavy beer consumed in a limited restaurant must come from a container or package having an official state label affixed.~~]

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

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Alcoholic Beverage Control, Administration
R81-4C-13
Grandfathered Bar Structures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32572
FILED: 04/28/2009, 16:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The amendment adds a new section to Rule R81-4C. S.B. 187 made extensive changes in how restaurants may operate with bar structures on the premises. This amendment defines the terms "actively engaged in the construction of the restaurant" and "remodels the grandfathered bar structure". (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32574 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsections 32A-4-307(7)(a)(i)(B)(I)(Bb) and 32A-4-307(7)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be a potential cost to the state budget if restaurants decide to remodel their grandfathered bar structure as defined by this rule amendment. Each restaurant that remodels its grandfathered bar structure may apply for credit for purchases of liquor from state stores and package agencies for the actual remodeling cost up to $30,000. There is no way of knowing at this point how many restaurants will remodel their bar structure and apply for the liquor credit. S.B. 187 limits the aggregate credit available to $1,000,000 and limits the time frame within which the restaurant must apply for the credit.

❖ LOCAL GOVERNMENTS: None--The provisions of S.B. 187 deal specifically with regulations of the Department of Alcoholic Beverage Control, and not with local government regulations.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Even for those small restaurants that may choose to remodel their bar structure and apply for the liquor credit, the

credit will only be for the cost of the remodel, therefore, these restaurants will realize neither a cost nor a savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no compliance costs associated with this proposed rule amendment. The rule simply defines terms introduced in S.B. 187.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because it is desirable to many restaurant owners to have a working bar structure in their establishment, it is not anticipated that many restaurant owners will choose to remodel their bar structure to take advantage of the liquor credit option in S.B. 187. And if they do, the liquor credit will only be in the amount of the remodel costs. Therefore, it is not anticipated that this bill or the rule amendment will have a fiscal impact on many businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-13. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32A-4-307(7)(a)(i) which provides that:

(i) a bar structure, as defined in 32A-1-105(4), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a limited restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32A-4-307(7)(a)(ii) which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32A-4-307(7)(a)(i)(B)(I)(Bb) and 32A-4-307(7)(a)(ii) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32A-4-307(7)(a)(ii) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32A-4-307(6), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-4-307(7)(a)(i)(B)(I)(Bb); 32A-4-307(7)(a)(ii)

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Alcoholic Beverage Control, Administration
R81-4D-1
Licensing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32575
FILED: 04/29/2009, 10:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The amendment to this rule stipulates that a conference center must be at least 30,000 square feet in size unless it is grandfathered. The amendment also corrects a statutory reference. Both of these amendments are proposed to implement S.B. 187.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This rule mirrors new language in S.B. 187. Except for possible lost licensing fees for small venues that no longer qualify for this permit (which cannot be determined at this time), this amendment will not affect the state budget.

❖ LOCAL GOVERNMENTS: None--On-premise banquet facilities are licensed by the state. This amendment will not affect local governments since they are not involved in this licensing.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Since this rule amendment simply mirrors new language in S.B. 187, it does not, in itself, affect small businesses. The new law, however, does affect small businesses in that most small conference centers can be categorized as small businesses and no longer qualifying for an on-premise banquet permit will very likely impede their ability to provide full service to their patrons. Though it is not possible to estimate to what extent small businesses will be affected, it can be surmised that some of these small venues may lose business as a result of the new law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is likely there will be no compliance costs to affected persons unless the owner of a grandfathered small conference center decides to enlarge the space of the facility to qualify for the on-premise baquet permit. None of the owners of grandfathered licensees have indicated they will do this.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A majority of the Alcoholic Beverage Control (ABC) commissioners felt that small venues should qualify for an on-premise banquet license because the permit adds controls to the service of alcoholic beverages. The Legislature thought differently. I feel this new law and rule will have a negative fiscal impact on the owners of many small conference centers who would otherwise be licensed to sell liquor in a more responsible and controlled manner. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals;[~~ and~~]

(iii) that is in total at least 30,000 square feet unless the facility is a "grandfathered facility" under 32A-4-401(8); and

[~~(iii)~~](iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105[~~(41)~~](44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(24).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~July 30, 2008~~]2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-4D-10
State Label

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32576
FILED: 04/29/2009, 11:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is proposed to implement S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The requirement for state labels on liquor containers was eliminated by S.B. 187. This amendment eliminates the need for on-premise banquet licensees to only sell or serve liquor with a state label on the container. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32577 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--After 05/12/2009, liquor purchased by on-premise banquet licensees will no longer have a state label. The fact that these licensees have bottles without the label will have no cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: None--The state label was a requirement of the Liquor Act, and not requiring on-premise banquet licensees to have bottles with the label will not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--There is no cost or savings to the licensee or others in not having liquor bottles with state labels since the labels are affixed by the state store and/or package agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There is no cost or savings to the licensee in not having liquor bottles with state labels since the labels are affixed by the state store and/or package agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no reason there will be a fiscal impact for businesses as a result of this proposed amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
[~~R81-4D-10. State Label.~~
~~All liquor consumed on the premises of an on-premise banquet license must come from a container or package having an official state label affixed.~~

]KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~July 30, 2008~~]2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-1
Licensing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32578
FILED: 04/29/2009, 12:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 eliminated the membership requirement for dining and social clubs. This rule amendment replaces the words "private club" with the word "club" and replaces the terms "class C private club" or "class D private club" with the terms "dining" or "social" club. The amendment also permits present class C and class D private club owners to convert to a different type of classification during the 2009 renewal period.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment is proposed primarily for the purpose of changing language in the rule to match language in S.B. 187. It also permits licensees to change classification. Neither of these things will create a cost or savings to the state budget.
❖ LOCAL GOVERNMENTS: None--Provisions in the Liquor Act that regulate private clubs are managed by the Department of Alcoholic Beverage Control and do not require regulation by local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The renewal cost will be the same for the owner of a small private club that decides to change classification as it would have been if the club owner had decided not to change classification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule is being amended primarily for the purpose of matching rule terminology with the terminology in S.B. 187, and there will be no compliance costs assessed to those who choose to change club classification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Most of what this rule amendment does is to match rule language with the language in S.B. 187, and to permit club owners to change classification. These changes will have no fiscal impact on these businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-1. Licensing.

(1) [~~Private club~~]Club liquor licenses are issued to persons as defined in Section 32A-1-105[~~(41)~~](44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-5-102(4), 32A-5-103 and 32A-5-107[~~(40)~~](26).

(2)(a) At the time the commission grants a [~~private~~]club license the commission must designate whether the [~~private~~]club qualifies to

operate as [~~a class A, B, C, or D private~~]an equity, fraternal, dining, or social club based on criteria in 32A-5-101.

(b) During the June 2009 renewal period, a class C private club licensee or class D private club licensee may request to convert to a different type of club license effective July 1, 2009. [~~After the~~]Also, after any club license is granted, a [~~private~~]club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32A-5-101.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the [~~private~~]club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(3)(a) A [~~class C private~~]dining club must operate as [~~a dining club as defined~~]described in 32A-5-101(3)[~~(c)~~](a)(ii)(C), and must maintain at least 50% of its total private club business from the sale of food, not including mix for alcoholic beverages, service charges, and membership fees.

(b) A [~~class C private~~]dining club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately reclassified by the commission as a [~~class D private~~]social club. If the commission grants the order to show cause, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be classified as a [~~class C private~~]dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 50%.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-2
Application

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32580
FILED: 04/29/2009, 14:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being proposed to implement law changes brought about by the passage of S.B. 187. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This amendment removes the term "private" from the private club language in the rule.

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

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: None--The amendment merely deletes the word "private" from the rule.
- LOCAL GOVERNMENTS: None--The amendment merely deletes the word "private" from the rule.
- SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The amendment merely deletes the word "private" from the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This terminology change in the rule will not create a compliance cost for licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact for businesses as a result of this rule amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a [~~private~~]club license when the requirements of Sections 32A-5-102,-

103, and -106 have been met, a completed application has been received by the department, and the [~~private~~]club premises have been inspected by the department.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-5
Advertising

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32581
FILED: 04/29/2009, 15:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement provisions of S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment exchanges the word "private" for "equity and fraternal" when referring to the two classes of clubs that will remain private. The amendment also removes references to visitor cards because there will no longer be a need for the sale of visitor cards. One statutory reference will also be corrected.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment does not change the intent of the rule, only the language. There will be no cost or savings to the state budget as a result.
❖ LOCAL GOVERNMENTS: None--This amendment makes minor changes to some terminology in the rule. There will be no costs to local governments as a result.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Since this rule amendment merely changes the language in the rule to mirror the language in S.B. 187, there will be no costs or savings to small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The two remaining classifications of private clubs do not sell visitor cards, therefore, there will be no operational changes required and no compliance costs as a result of this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule will have no fiscal impact on club licensees. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-5. Advertising.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107[~~(17)~~](1) that [~~private~~]equity and fraternal clubs advertise in a manner that preserves the concept that [~~private~~]such clubs are private and not open to the general public.

(3) Application of Rule.

(a) Any public advertising by [~~a private~~]an equity or fraternal club, its employees, agents, or members, or by any person under contract or agreement with the club shall clearly identify the club as being "a private club for members". In print media, this club identification information must be no smaller than 10 point bold type.

(b) [~~A private~~]An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that runs counter to the concept that such clubs are private and not open to the general public such as:

(i) offering or providing complimentary club memberships [~~or visitor cards~~]to the general public;

(ii) offering or providing full or partial payment of membership fees or dues[~~, or visitor card fees~~] to members of the general public;

(iii) offering or implying an entitlement to a club membership [~~or visitor card~~]to members of the general public; or

(iv) offering to host members of the general public into the club.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

Alcoholic Beverage Control, Administration

R81-5-6

Club Licensee Liquor Order and Return Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32582
FILED: 04/29/2009, 15:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement the provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This amendment removes the word "private" where it appears in the rule. Clubs in Utah will no longer be considered private.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment changes language in the rule to mirror language in S.B. l87.
❖ LOCAL GOVERNMENTS: None--This amendment changes language in the rule to mirror language in S.B. l87.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--This amendment changes language in the rule to mirror language in S.B. l87.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment changes language in the rule to mirror language in S.B. l87.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as a result of this rule amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-6. [~~Private~~]Club Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a [~~private~~]club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009

Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-7
Club License Operating Hours.

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32628
FILED: 04/30/2009, 16:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions in S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This amendment deletes the word "private" where it appears in the rule. Most clubs in Utah will no longer be private. The amendment also corrects a statutory reference in the rule.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This rule amendment merely deletes the word "private" to mirror changes in S.B. 187 and corrects a statutory reference. The amendment will not affect the state budget.
❖ LOCAL GOVERNMENTS: None--This rule amendment merely deletes the word "private" to mirror changes in S.B. 187 and corrects a statutory reference. Administrative rules associated with the Liquor Act are enforced by the Department of Alcoholic Beverage Control (DABC) and do not involve local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--This rule amendment merely deletes the word "private" to mirror changes in S.B. 187 and corrects a statutory reference. It will not fiscally affect small businesses or other businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule amendment merely deletes the word "private" to mirror changes in S.B. 187 and corrects a statutory reference. There will be no compliance costs associated with this proposed rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment will have no fiscal impact on businesses. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-7. [~~Private~~]Club Licensee Operating Hours.
Allowable hours of liquor sales shall be in accordance with Section 32A-5-107[~~(27)~~](14). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-9
Liquor Storage

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32583
FILED: 04/29/2009, 15:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The word "private" is removed where it appears in the rule. Clubs in Utah are no longer private.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The amendment does not change the intent of the rule. It merely changes language in the rule to match language in S.B. 187.
❖ LOCAL GOVERNMENTS: None--The amendment does not change the intent of the rule. It merely changes language in the rule to match language in S.B. 187.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The amendment does not change the intent of the rule. It merely changes language in the rule to match language in S.B. 187.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendment does not change the intent of the rule. It merely changes language in the rule to match language in S.B. 187.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because there is no change to the intent of the rule, there will be no fiscal impact on businesses as a result of this amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-9. Liquor Storage.

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

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-10
Alcohol Product Flavoring

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32584
FILED: 04/29/2009, 15:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This amendment removes the word "private" where it appears in the rule. Clubs in Utah are no longer private.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The intent of the rule will not change with this amendment. It merely removes the word "private" when describing a club licensee. This change will not affect the state's budget.
❖ LOCAL GOVERNMENTS: None--The intent of the rule will not change with this amendment. It merely removes the word "private" when describing a club licensee. This change does not affect local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The intent of the rule will not change with this amendment. It merely removes the word "private" when describing a club licensee. Small businesses will not be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The intent of the rule will not change with this amendment. It merely removes the word "private" when describing a club licensee. There are no compliance requirements with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No businesses will experience a fiscal impact as a result of this rule amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-10. Alcoholic Product Flavoring.

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

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

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-11
Price Lists

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32585
FILED: 04/29/2009, 16:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement provisions of S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This amendment removes the word "private" where it appears in the rule. Clubs in Utah are no longer private. The rule also exchanges the terms "members, guests, and visitors" for the term "patrons". This change is made because clubs are no longer required to sell memberships.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment does not change the original intent of the rule, it merely removes and replaces terminology that is no longer pertinent. The amendment does not affect the state's budget.
❖ LOCAL GOVERNMENTS: None--This amendment does not change the original intent of the rule, it merely removes and replaces terminology that is no longer pertinent. Local governments are not affected by this amendment.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--This amendment does not change the original intent of the rule, it merely removes and replaces terminology that is no longer pertinent. There will be no fiscal effect for small businesses from this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment does not change the original intent of the rule, it merely removes and replaces terminology that is no longer pertinent. The amendment carries no compliance requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will not see a fiscal impact from this rule amendment. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-11. Price Lists.

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

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

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

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

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

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Alcoholic Beverage Control, Administration
R81-5-13
Brownbagging

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32588
FILED: 04/30/2009, 09:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment deletes the word "private" where it is found in the rule. It also corrects a statutory reference.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment does not alter the intent of the rule. It changes terminology to match that of S.B. 187 and corrects a statutory reference. The state budget will not be affected.
❖ LOCAL GOVERNMENTS: None--This amendment does not alter the intent of the rule. It changes terminology to match that of S.B. 187 and corrects a statutory reference. Local governments are not affected.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--This amendment does not alter the intent of the rule. It changes terminology to match that of S.B. 187 and corrects a statutory reference. There will be no effect on small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment does not alter the intent of the rule. It changes terminology to match that of S.B. 187 and corrects a statutory reference. There are no compliance requirments invoked by amending the rule in this way.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment does not change the intent of the rule. Businesses will not be fiscally impacted by its passage. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-13. Brownbagging.

When private social functions or privately hosted events, as defined in 32A-1-105[~~(44)~~](47), are held on the premises of a licensed [~~private~~]club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

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

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

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006

Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

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Alcoholic Beverage Control, Administration
R81-5-14
Membership Fees and Monthly Dues

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32589
FILED: 04/30/2009, 11:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 creates four classes of clubs in Utah: Equity, Fraternal, Dining, and Social. Equity and fraternal clubs will remain private and will continue to sell memberships according to their bylaws. Dining and social clubs will be open to the public. This rule amendment exchanges the word "private" for the words "equity and fraternal" where the word private appears. It also deletes provisions that mandate the amount of membership fees and that deal with memberships for clubs in hotels since these provisions are no longer requisite.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This amendment does no more than make changes to comply with S.B. 187 in terminology and deletion of unnecessary provisions. The state did not collect any money on the sale of private club memberships, so there will be no cost or savings by eliminating the membership requirement.

❖ LOCAL GOVERNMENTS: None--The private club membership requirement is a provision of state law. The changes made in this amendment will not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment is being proposed to bring the rule in line with state law and, in itself, will have no effect of small businesses. However, most private clubs have fewer than fifty employees. The decision to be open to the public is a business decision. It is anticipated that any revenues lost from the sale of club memberships will likely be made up by added business resulting from being open and available to the population at large.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Most clubs will experience savings rather than costs from compliance with this law and rule change. Clubs will no longer be required to print membership applications and cards and will no longer need to account for membership records. This will be a savings of both money and time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Alcoholic Beverage Control (DABC) staff is pleased with the legislature's decision to eliminate private club memberships in most of Utah's clubs. Private club owners will not only save on money and time spent to manage membership sales and records, but their clubs should experience additional revenues from a larger clientele. DABC feels the savings and added revenues will outweigh the cost of making the change. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) [~~through (7) that private~~]that equity and fraternal clubs operate in a manner that preserves the concept that [~~private clubs~~]they are private and not open to the general public.

(3) Application of Rule.

(a) Each [~~private~~]equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.[~~However, the application fees shall not be less than $4, and the monthly dues may not be less than one dollar per month.~~]

(b) [~~A private~~]An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.[

~~(c) Notwithstanding section (3)(b), if a private club is located within a hotel, the hotel may assist the club in the issuance of a club membership to a guest of the hotel under the following conditions:~~
~~(i) the guest has booked a room and is staying at the hotel;~~
~~(ii) the costs of the membership application fee and membership dues are paid for by the guest either as a separate charge, or as part of the hotel room rate;~~
~~(iii) the private club receives payment of the fees and dues for all memberships issued to guests of the hotel;~~
~~(iv) the hotel and the club shall maintain a current record of each membership issued to a guest of the hotel as required by the commission;~~
~~(v) the records required by subsection (iv) shall be available for inspection by the department; and~~
~~(vi) the issuance of the membership is done in accordance with the procedures outlined in 32A-5-107(1) through (4).~~]

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration

R81-5-15

Minors in Lounge or Bar Areas

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32591
FILED: 04/30/2009, 11:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The name of club classifications changes in state law from "A, B, C, or D" to "Equity, Fraternal, Dining, and Social". This amendment makes that change in the rule. The amendment also clarifies that minors may not be on the premises of a social club unless the club has a concert/dance hall permit.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment only renames the classes of clubs and regulates where minors may and may not be in those clubs. It will have no cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: None--Local governments have their own regulation for minors in licensed establishments. This rule governs state regulations and will have no direct effect on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The law previously permitted social (class D) club owners to hire minors to perform maintenance and cleaning services during hours when the club was closed. Some club owners permitted their children to perform these duties. The new law and rule prohibit minors from the premises of social clubs at all times. This may affect many small clubs who will now need to hire a person over the age of 21 to perform this work. It is unknown what the exact cost will be since the Department of Alcoholic Beverage Control (DABC) is unaware of how many clubs use minors for maintenance and cleaning services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The law previously permitted social (class D) club owners to hire minors to perform maintenance and cleaning services during hours when the club was closed. Some club owners permitted their children to perform these duties. The new law and rule prohibit minors from the premises of social clubs at all times. This may affect many small clubs who will now need to hire a person over the age of 21 to perform this work. It is unknown what the exact cost will be since DABC is unaware of how many clubs use minors for maintenance and cleaning services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: DABC staff feels the legislature's decision to prohibit minors from the premises of social clubs was a responsible and wise decision. Some small clubs may have an added expense in hiring an adult to perform maintenance and cleaning services, but DABC feels the cost is worth the security of not allowing minors in proximity to open liquor. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. [~~Private~~]Clubs.
R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to 32A-5-107[~~(8)(a)(iv)~~](2), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of [~~any class A, B, C, or D of private~~]an equity, fraternal, or dining club[~~except when the minor is employed by the club to perform maintenance and cleaning services during hours when the club is not open for business~~]. A minor may not be on the premises of a social club except to the extent allowed under 32A-5-107(2)(d), and may not be admitted into, use, or be on the premises of any lounge or bar area of a social club.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in 32A-1-105(4);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of [~~a class A, B or C private~~]an equity, fraternal, or dining club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration

R81-5-16

Sexually Oriented Adult Entertainment or Businesses

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32599
FILED: 04/30/2009, 13:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is being deleted in its entirety because the provisions in this section are now found in Subsections 32A-1-601 through 604.

SUMMARY OF THE RULE OR CHANGE: This section will be deleted in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The provisions of this rule are not changing. They are now in statute and do not need to be duplicated in rule. There is no cost or savings to the state budget in deleting this rule.

❖ LOCAL GOVERNMENTS: None--Local governments have their own ordinances dealing with sexually-oriented businesses. They are not regulated by state government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The provisions of this rule are not changing. They are now in statute and do not need to be duplicated in rule. Since there are no changes from what is already mandated, there will be no cost to businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of this rule are not changing. They are now in statute and do not need to be duplicated in rule. Since there are no changes from what is already mandated, there will be no cost to businesses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to businesses as a result of the deletion of this section. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. Private Clubs.
[~~R81-5-16. Sexually Oriented Adult Entertainment or Businesses.~~

~~(1) Pursuant to 32A-5-107(8)(a)(v), a minor may not be admitted into, use, or be on the premises of any private club that provides sexually oriented adult entertainment or operates as a sexually oriented business. This includes any club:~~

~~(a) that is licensed by local authority as a sexually oriented business;~~

~~(b) that allows any person on the premises to dance, model, or be or perform in a state of nudity or semi-nudity; or~~

~~(c) that shows films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified anatomical areas or specified sexual activities.~~

~~(2) "Nudity"or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple.~~

~~(3) "Semi-nudity" means a state of dress in which any opaque clothing covers the genitals, anus, anal cleft or cleavage, pubic area, and vulva narrower than four inches wide in the front and five inches wide in the back, and less than one inch wide at the narrowest point, and which covers the nipple and areola of the female breast narrower than a two inch radius.~~

~~(4) "Specified anatomical areas" means:~~

~~(a) human male genitals in a state of sexual arousal; or~~

~~(b) less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or a female breast.~~

~~(5) "Specified sexual activities" means acts of, or simulating:~~

~~(a) masturbation;~~

~~(b) sexual intercourse;~~

~~(c) sexual copulation with a person or a beast;~~

~~(d) fellatio;~~

~~(e) cunnilingus;~~

~~(f) bestiality;~~

~~(g) pederasty;~~

~~(h) buggery;~~

~~(i) sodomy;~~

~~(j) excretory functions as part of or in connection with any of the activities set forth in (a) through (i).~~

]**KEY: alcoholic beverages**
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration

R81-5-17

Visitor Cards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32600
FILED: 04/30/2009, 13:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Since dining and social clubs will no longer be private, and equity and fraternal clubs will deal with memberships according to their bylaws, there is no further need for a club to sell a visitor card. Therefore, this section will be deleted in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The state does not receive any revenues from a club's sale of visitor cards, so eliminating the need for visitor cards will not affect the state budget.

❖ LOCAL GOVERNMENTS: None--The practice of selling visitor cards has always been regulated by state government. There will be no cost or savings to local governments resulting from the deletion of this section.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The law previously mandated that dining and social clubs could sell visitor cards for a minimum of $4. For the clubs who sold visitor cards, there may be a small reduction in revenue. Since the number of visitor cards sold in a given period of time varies, it is not possible to estimate what this monetary loss may be.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--If anything, dining and social clubs may realize a savings in the printing costs of applications and visitor cards, and the time spent keeping records of visitor card sales.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Dining and social clubs may realize a savings in the printing costs of applications and visitor cards, and the time spent keeping records of visitor card sales. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. Private Clubs.
[~~R81-5-17. Visitor Cards.~~

~~(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.~~

~~(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.~~

~~(3) Application of Rule.~~

~~(a) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to purchase or purchase in full or in part a visitor card for a member of the general public.~~

~~(b) Notwithstanding section (3)(a), if a private club is located within a hotel, the hotel may assist the club in the issuance of a visitor card to a guest of the hotel under the following conditions:~~

~~(i) the guest has booked a room and is staying at the hotel;~~

~~(ii) the cost of the visitor card is paid for by the guest either as a separate charge, or as part of the hotel room rate;~~

~~(iii) the private club receives payment of the fees for all visitor cards issued to guests of the hotel;~~

~~(iv) the hotel and the club shall maintain a current record of each visitor card issued to a guest of the hotel as required by the commission;~~

~~(v) the records required by subsection (iv) shall be kept for a period of three years and shall be available for inspection by the department; and~~

~~(vi) the issuance of the visitor card is done in accordance with the procedures outlined in 32A-5-107(6).~~

]**KEY: alcoholic beverages**
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-18
Age Verification - Dining and Social Clubs.

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32604
FILED: 04/30/2009, 14:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment: 1) establishes the minimum technology specifications of electronic age verification devices; 2) establishes the procedures for recording identification that cannot be electronically verified; and 3) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by law. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 32606 in this issue, May 15, 2009, of the Bulletin and was effective 05/01/2009.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsection 32A-1-304.5(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The Department of Alcoholic Beverage Control (DABC) will not be required to fund the purchase of these electronic ID devices. Licensees will be required to purchase the devices, therefore, there will be no cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: None--The law requiring electronic ID devices will be regulated by the DABC. Local governments will not be involved.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Many dining and social club licensees have fewer than fifty employees. It is estimated that each electronic ID device will cost approximately $800. There are currently 295 dining and social clubs in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost of each electronic ID device is approximately $800. There are currently 295 dining and social clubs in Utah. Each club will be required to have at least one device, though some of the larger clubs will likely need to have two or more devices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Though it will cost each dining and social club licensee a minimum of $800 to comply with this rule, the legislature felt it was the best way to ensure that minors are not permitted into clubs or to purcahse an alcohol beverage. In this case, the end justifies the means. Dennis R. Kellen, Director

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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. Private Clubs.
R81-5-18. Age Verification - Dining and Social Clubs.

(1) Authority. 32A-1-303 and 32A-1-304.5.

(2) Purpose.

(a) 32A-1-304.5 requires dining and social club licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32A.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Section 32A-5-107;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32A-1-303.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~]2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-304.5(5); 32A-5-107(18); 32A-5-107(23)

♦ ♦

Commerce, Occupational and Professional Licensing

R156-81

Retired Volunteer Health Care Practitioner Act Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 32551
FILED: 04/27/2009, 07:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2009 General Session of the Legislature, H.B. 121 was passed which created Title 58, Chapter 81, with respect to the licensing and regulation of retired volunteer health care practitioners. This rule is being proposed to clarify provisions of that statute. (DAR NOTE: H.B. 121 (2009) is found at Chapter 263, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides for the following: title, definitions, authority/purpose, qualifications for licensure/application requirements, organization/ relationship to Rule R156-1 and renewal cycle/procedures.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a) and 58-81-104(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately $100 to print the rule once the new rule is made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: This proposed new rule only applies to certain licensed occupations and professions outlined in Title 58, Chapter 81, and therefore it does not apply to local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small businesses who qualify as a "qualified location" will benefit from the new statute and this resulting rule because certain licensed individuals may volunteer at their charity care facility without compensation. There will be no costs or savings to the licensed occupations/professions outlined in Title 58, Chapter 81, as the governing statute provides the Division shall waive all fees for an applicant who applies for a volunteer health care practitioner license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs to the licensed occupations/professions outlined in Title 58, Chapter 81, as the governing statute provides the Division shall waive all fees for an applicant who applies for a volunteer health care practitioner license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing adopts provisions necessary to administer the Retired Volunteer Health Care Practitioner Act, Laws of Utah 2009 (H.B. 121, Second Substitute). No fiscal impact to businesses is anticipated as the applicable law contemplates no costs to volunteer practitioners for license application fees and no compensation to the volunteer practitioners from those who receive services. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Noel Taxin at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@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 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/18/2009 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing.
R156-81. Retired Volunteer Health Care Practitioner Act Rule.
R156-81-101. Title.

This rule is known as the Retired Volunteer Health Care Practitioner Act Rule.

R156-81-102. Definitions.

In addition to the definitions in Title, Chapters 1 and 81, as used in Title 58, Chapter 81 or this rule:

(1) "Qualified location", as defined in Subsection 58-81-102(3), must be a Section 501(c)(3) non-profit organization recognized by the Internal Revenue Service.

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of public safety, law enforcement or firefighter fraternal association.

(3) "Supervision" is further defined according to the regulating professional practice acts as referred to in Subsection 58-81-102(2).

R156-81-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsections 58-1-106(1)(a) and 58-81-104(4) to enable the division to administer Title 58, Chapter 81.

R156-81-104. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1)(g) and 58-1-301(3), the application requirements for licensure in Section 58-81-104 are established as follows. The applicant shall:

(1) complete the division approved form for the delegation of service agreement; and

(2) sign the affidavits in the application certifying that:

(a) the applicant understands the applicable laws and rules;

(b) the applicant will engage exclusively in volunteer health care services;

(c) the applicant will not receive compensation for services; and

(d) an agreement for delegation of services is in place.

R156-81-105. Organization - Relationship to Rule R156-1.

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

R156-81-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to a licensee under Title 58, Chapter 81 is the same renewal cycle applicable to a similarly situated licensed practitioner as established by rule in Section R156-1-308a.

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

KEY: licensing, volunteer health care practitioner
Date of Enactment or Last Substantive Amendment: 2009
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-81-104(4)

Commerce, Real Estate
R162-7-1
Filing of Complaint

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32586
FILED: 04/29/2009, 16:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing clarifies that the Division may investigate violations of prohibited conduct under statute or rule even if the complaint is related to a commission dispute. The Division will not adjudicate the dispute, but may take action for otherwise prohibited conduct.

SUMMARY OF THE RULE OR CHANGE: This rule filing clarifies that the Division may investigate violations of prohibited conduct under statute or rule even if the complaint is related to a commission dispute. The Division will not adjudicate the dispute, but may take action for otherwise prohibited conduct.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This rule filing will have no impact on the state budget because the Division already investigates violations of prohibited conduct.
❖ LOCAL GOVERNMENTS: This rule filing will have no impact on local government because they are exempt from real estate license laws.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule filing will only have an impact on small business if a brokerage is violating prohibited conduct under the law in relation to a real estate commission and is hoping to be exempt from investigation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing will have no compliance cost for affected persons, unless a person is violating prohibited conduct under the law in relation to a real estate commission and is hoping to be exempt from investigation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses from this rule filing, which clarifies existing provisions. Francine Giani, Executive Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mark Steinagel at the above address, by phone at 801-530-6744, by FAX at 801-530-6749, or by Internet E-mail at msteinagel@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Mark Steinagel, Director

R162. Commerce, Real Estate.
R162-7. Enforcement.
R162-7-1. Filing of Complaint.

7.1. An aggrieved person may file a complaint in writing against a licensee; or the Division or [~~the~~]Commission may initiate [~~a complaint upon its own motion~~]an investigation for an alleged violation of the provisions of these rules or of Utah Code Annotated Section 61-2-1, et seq. The Division [~~will not~~]may only entertain a complaint[~~complaints~~] between licensees regarding [~~claims to~~]commissions if the complaint alleges, or the Division suspects, a specific violation of Utah Code Annotated Section 61-2-11 or Section R162-6-1.

KEY: real estate business
Date of Enactment or Last Substantive Amendment: [~~May 30, 2007~~]2009
Notice of Continuation: April 19, 2007
Authorizing, and Implemented or Interpreted Law: 61-2-5.5

Education, Administration
R277-503-4
Licensing Routes

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32643
FILED: 05/01/2009, 14:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide new and amended language to clarify procedures for current educator license holders who are

applying for district-specific licenses in additional license areas of concentration.

SUMMARY OF THE RULE OR CHANGE: The amendments add new and amended language to Section R277-503-4 to clarify procedures for additional endorsements attached to educators' licenses.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The new and revised language clarifies procedures. This clarification of procedures does not require additional funding.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The new and revised language clarifies procedures. This clarification of procedures does not require additional funding.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to the state budget. The new and revised language clarifies procedures that relate to educators in public schools and does not involve small businesses. Subsection R277-503-4-B(3)(e) may give license applicants money. Years of successful volunteer experience may be substituted for required license courses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. No additional fees are required of licensed educators because of the new and revised language in the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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R277. Education, Administration.
R277-503. Licensing Routes.
R277-503-4. Licensing Routes.

Applicants who seek Utah licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

(a) NCATE; or

(b) TEAC; or

(2) Regionally accredited competency-based teacher preparation programs as provided under R277-503-1N.

B. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on the ETS Praxis II Elementary Education Content Knowledge Examination (0014) to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status an ARL license applicant shall submit a score on identified ETS Praxis II Applicable Content Knowledge test(s) where available to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(3) Licensing by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s), and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district inservice classes, Board-approved training, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) An applicant who has been employed as a full-time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:

(1) The applicant has had at least three years of paraeducator experience;

(2) The applicant's experience has been successful based on documentation from the school/school district; and

(3) The USOE has approved the applicant's experience in lieu of pedagogy course(s).

([~~e~~]f) The employing school district shall assign a trained mentor to work with the applicant for licensing by agreement.

([~~f~~]g) The school district shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The district may request assistance from a institution of higher education or the USOE in the monitoring and assessment.

([~~g~~]h) The school district shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The district may request assistance in this assessment; and

([~~h~~]i) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the school district.

([~~i~~]j) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(4) USOE Licensing by Competency

(a) A school district employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district who satisfies the minimum requirements of R277-503-3.

(b) An employing school district, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing school district shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The school district shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The school district shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The school district may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the school district and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4B(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

C. School district/charter school specific competency-based licenses:

(1) A local board/charter school board may apply to the Board for a [~~letter of authorization~~]school district/charter school specific license to fill a position in the school district/charter school. The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) The employing school district/charter school shall request a [~~letter of authorization~~]school district/charter school specific license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the [~~letter of authorization~~]school district/charter school specific license from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, or results or scores of a rigorous state core academic subject test, similar to the test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the [~~letter of authorization~~]school district/charter school specific license from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual with a district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization or district/charter school specific competency-based license.

(8) The written copy of the district/charter school specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE.

(9) A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

(10) School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

(11) If an individual holds a Utah license, the application shall be subject to additional USOE review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the school district/charter school specific license.

(12) If the application is not approved based on a USOE review of the criteria provided in R277-503-4C(11), appropriate licensure procedures shall be recommended to the requesting district/charter school. The applicant may be required to renew an expired license, apply for an endorsement, pass appropriate Board approved tests consistent with R277-503-3C, obtain an additional area of concentration, apply to Alternative Route to Licensure, or satisfy other reasonable standards.

KEY: teachers, alternative licensing
Date of Enactment or Last Substantive Amendment: [~~May 9, 2007~~]2009
Notice of Continuation: March 29, 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401(3)

♦ ♦

Education, Administration
R277-600
Student Transportation Standards and Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32644
FILED: 05/01/2009, 14:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in procedures due to findings from a Legislative Audit. The revised rule recommends changes based on a Legislative audit directing a funding formula study committee comprised of small, medium, and large school districts develop recommendations for revising the student transportation funding formula. The changes create greater transparency and equity among school districts. The changes also provide procedures for school buses being used for non-pupil transportation, and school buses traveling across state lines. Revised standards and procedures address State Risk Management liability concerns.

SUMMARY OF THE RULE OR CHANGE: The amendments provide significant new and revised language throughout the rule to reflect Legislative audit findings and funding formula study committee recommendations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(d)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The changes to the rule provide for more transparency and funding equity among school districts.

❖ LOCAL GOVERNMENTS: There are no anticipated costs to local government. The revision to the rule provides for a new formula for student transportation funding that makes costs more transparant and provides increased equity among school districts. There may be some savings to school districts if revised policies and practices avoid liability for school districts in public school transportation decisions.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses. The revisions to this rule apply to student transportation in public school districts and not to businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The funding formula has been revised to provide for greater equity among school districts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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R277. Education, Administration.
R277-600. Student Transportation Standards and Procedures.
R277-600-1. Definitions.

[~~C~~]A. "ADA" means average daily attendance.

[~~H~~]B. "ADM" means average daily membership.

C. "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.

[~~C~~]D. "[~~Adjusted/a~~]Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day,[~~ required deadhead miles,~~] after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a[~~ prorated~~] portion of the bus purchase prices[~~ less salvage value~~]. All approved costs are adjusted by the USOE

consistent with a Board-approved formula per the annual legislative transportation appropriation.

E. "APR" means the school district's annual program report, one component of which is for approved to and from school pupil transportation costs.

[~~A~~]F. "Board" means the Utah State Board of Education.

[~~D~~]G. "Bus route miles" means operating a bus with passengers.

[~~E~~]H. "Deadhead" means operating a bus when no passengers are on board.[

~~F. "Office" means the Utah State Office of Education.~~

~~B. "Density" means the number of eligible students divided by the approved total bus route miles plus half of the deadhead miles.~~]

I. "Hazardous" means danger or potential danger which may result in injury or death.

J. "IDEA" means the Individuals with Disabilities Education Act, Title 1, Part A, Section 602.

[~~L~~]K. "IEP" (individualized education program)[~~"~~] means a written statement for a student with a disability that is developed and implemented under CFR Sections 300.340 through 300.347. The IEP serves as a communication vehicle between parents and school personnel and enables them as equal participants to decide jointly what the student's needs are, what services shall be provided to meet those needs, what the anticipated outcomes may be, and how the student's progress toward meeting the projected outcomes shall be evaluated.

L. "Local board" means the local school board of education.

[~~J~~]M. "M.P.V." means multipurpose passenger vehicle: any motor vehicle with less than 10 passenger positions, including the driver, which cannot be certified as a bus.

[~~K~~]N. "Out-of-pocket expense" means gasoline, oil, and tire expenses.

O. "USOE" means the Utah State Office of Education.

R277-600-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, by Section 53A-1-402(1)([~~e~~]d) which directs the Board to establish rules for bus routes, bus safety and other transportation needs and by Section 53A-17a-126 and 127 which provides for distribution of funds for transportation of public school students and standards for eligibility.

B. The purpose of this rule is to specify the standards under which school districts may qualify for state transportation funds.

R277-600-3. General Provisions.

A. State transportation funds are used to reimburse school districts for the [~~direct~~]costs [~~of~~]reasonably related to transporting students to and from school. The Board defines the limits of school district transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

B. Allowable transportation costs are divided into two categories. Expenditures for regular bus routes established by the school district, and [~~appropriated~~]approved by the state, are [~~termed~~]A category costs. Other methods of transporting students to and from school are [~~termed~~]B category costs. The Board devises[~~ and distributes~~] a formula to determine the reimbursement rate for A category costs consistent with Section 53A-17a-127(3).[~~ The formula factors are density and adjusted/approved costs.~~] B category costs are approved on a line-by-line basis by the [~~Office~~]USOE after comparing the costs submitted by a school district with the costs of alternative methods of performing the designated function(s) and subject to adjustment per legislative appropriation.

C. The [~~Office~~]USOE shall develop a uniform accounting procedure for the financial reporting of transportation costs. The procedure shall specify the methods used to calculate allowable transportation costs. The [~~Office~~]USOE shall also develop uniform forms for the administration of the program.

D. All student transportation costs are recorded. Accurate mileage, minute, and trip records are kept by program. Records and financial worksheets shall be maintained during the fiscal year for audit purposes.

R277-600-4. Eligibility.

A. State transportation funds shall be used only for transporting eligible students.

B. Transportation [~~E~~]eligibility for elementary students (K-6) and secondary students (7-12)[~~, including seventh and eighth grade students,~~] is determined in accordance with the mileage from home specified in Section 53A-17a-127(1) and (2) to the school attended [~~upon~~]by assignment of the local board.

C. [~~A student who falls under the school finance law definition of student with disabilities, regardless of distance from the school attended upon assignment of the local board, is eligible, if transportation is identified as a needed service in the IEP.~~]A student whose IEP identifies transportation as a necessary service is eligible for transportation regardless of distance from the school attended by assignment of the local board.

D. Students who attend school for at least one-half day at an alternate location are expected to walk distances up to 1 and one half miles.

E. A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local board determines the transportation would improve safety affected by darkness or other hazardous conditions.

F. The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

R277-600-5. Student with Disabilities Transportation.

A. Students with disabilities are transported on regular buses and regular routes whenever possible. School [~~D~~]districts may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

B. School [~~D~~]districts may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

C. Transportation is provided by the Utah Schools for the Deaf and the Blind for students who are transported to its [~~extension~~]self-contained classes. Exceptions may be approved by the [~~Office~~]USOE.

R277-600-6. [~~Requirements for~~]Bus Route Approval.

A. Transportation is over routes proposed by local boards and approved by the [~~Office~~]USOE. Information requested by the [~~Office~~]USOE [~~must~~]shall be provided prior to approval of a route. A route usually is not approved for reimbursement if an equitable student transportation allowance or a subsistence allowance accomplishes the needed transportation at less cost. A route [~~must~~]shall:

(1) traverse the most direct public route;

(2) be reasonably cost effective related to other feasible alternatives;

(3) provide adequate safety;

(4) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(5) include an economically adequate number of students.

B. The minimum number of general education students required to establish a route is ten; the minimum number of students with disabilities is five. A route may be established for fewer students upon special permission of the State Superintendent.

C. The [~~local~~]school district designates safe areas for bus stops.

(1) To promote efficiency, the USOE approved minimum distance between bus stops is 3/10 of a mile. The USOE may approve shorter distances between bus stops for student safety.

(2) Bus routes shall avoid, whenever possible, bus stops on dead-end roads.

(3) [~~A s~~]Students [~~is expected to walk~~]are responsible for their own transportation to bus stops up to one and one-half miles from home[~~, depending on the age and ability of the student~~].

(4) Special education students are [~~expected to walk~~]responsible for their own transportation to bus stops [~~commensurate~~]consistent with their [~~ability~~]IEPs.

D. Changes made by school districts in existing routes or the addition of new routes [~~must~~]shall be reported to the [~~Office~~]USOE as they occur[~~, for approval~~]. The USOE shall review and may refuse to fund route changes as applicable.

[~~E. Early home routes do not qualify for state reimbursement unless approved by the Office prior to initiation.~~

~~F~~]E. Transporting eligible students home after school activities held at the student[~~'~~]s' school of regular attendance and within a reasonable time period after the close of the regular school day is approved route mileage.

G. A route may be approved as an alternative to building construction upon special permission of the [~~Office~~]USOE if the route is needed to allow more efficient school district use of school facilities. Building construction alternatives include elementary double sessions, year-round school, and attendance across school district boundaries.

H.(1) School districts may use State Guarantee Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(a) the local board has a policy that includes approval of trips at the appropriate administrative level;

(b) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

(c) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is most appropriate for the trip or activity; and

(d) the local board has consulted with State Risk Management.

(2) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing school districts maintain documentation that the routes are necessary, or are more cost-effective, or provide greater safety for students than in-state routes.

[~~**R277-600-7. Approved Deadhead Mileage.**~~

~~Deadhead mileage included in adjusted/approved costs is calculated as follows:~~

~~A. Deadhead mileage to and from school: mileage from the garage or bus storage area to the first pickup point, mileage between schools for other bus runs, and mileage from the last run in the morning and evening from the last stop to the garage or storage area.~~

~~B. Other deadhead mileage: mileage due to bus driver training and driving to service or repair sites.~~

]**R277-600-[~~8~~]7. Alternative Transportation.**

Bus routes that involve a large number of deadhead miles are analyzed for reduction or to determine if an alternative method of transporting students is more efficient. Approved alternatives include the following:

A. The costs incurred in transporting eligible pupils in a school district M.P.V. [~~is not an adjusted/approved expense~~]are approved costs as long as the costs demonstrate efficiency.

B(1) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation [~~is~~]are an [~~adjusted/~~]approved [~~expense~~]cost. A student is reimbursed for the mileage to the bus stop or school, whichever is closer, nearest the student's home[~~, and for reasonable and necessary out-of-pocket costs associated with student transportation~~]. The allowance shall not be less than the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations[~~. The trip mileage is paid for by car, one per family~~];

(2) a student allowance is made to the student and not to the parent for transporting one's own child or other students. This does not restrict parents from pooling resources[~~, but it does restrict payments in excess of out-of-pocket costs~~];

(3) if a student or the student's parent is unable to provide private transportation, with prior state approval, an amount equivalent to the student allowance is [~~paid~~]payable to the school district to help pay the costs of school district transportation;

(4) the student's mileage shall be measured and certified in school district records. The student's ADA, as entered in school records, is used to determine the student's attendance.

C(1) [~~t~~]The cost incurred in providing a subsistence allowance is an [~~adjusted/~~]approved [~~expense~~]cost. A parent is reimbursed for a student's room and board when a student lives at a site nearer to the assigned school, if the student does not have a school facility or bus service available within approximately 60 miles of the student's residence. Payment shall not exceed the Substitute Care Rate for Family Services for the current fiscal year. Adjustments for changes made in the rate during the year are included in the allowance. In addition to the reimbursement for room and board, the subsistence allowance includes the costs of two round trips per year.[~~ The costs are calculated on the basis of actual mileage traversed from home to school at the rate prescribed in R277-600-8B(1);~~]

(2) [~~a~~]A subsistence allowance is not applicable to a parent who maintains a separate home during the school year for the [~~purpose of closer location to a school~~]convenience of the family. [~~The~~]A parent's residence during the school year is the residence of the child[~~;~~].

D. Contracting or leasing for pupil transportation

(1) The cost incurred in engaging in a contract or leasing for transportation is an [~~adjusted/~~]approved [~~expense~~]cost at the prorated amount available to school districts.[~~— The amount reimbursed to districts using commercial contracts is determined in accordance with transportation costs per pupil in comparable districts.~~]

(2) Reimbursements for school districts using a leasing arrangement are determined in accordance with the comparable cost for the school district to operate its own transportation.

(3) Under a contract or lease, the school district's transportation administrator's time shall not exceed [~~1%~~] one percent of the commercial contract cost.

(4) Eligible student counts, bus route mileage, bus route minutes, and bus inventory data are required as if the school district operated its own transportation.

R277-600-[9]8. Other Reimbursable Expenses.

State transportation funds at the USOE determined prorated amount may be used to reimburse a school district for the following costs:

A. Salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics and other personnel necessary to operate the transportation program[~~.~~]:

(1) a full time supervisor may be paid at the same rate as other professional directors in the school district. The supervisor's salary [~~must~~]shall be commensura[~~ble~~]te with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions. A school district may claim a percentage of the school district superintendent's or [~~clerk's~~]other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is kept;

(2) The wage time for bus drivers includes[~~:~~

~~(a)~~] to and from school time: ten minute pre-trip inspection, actual driving time, ten minute post-trip inspection and bus cleanup, and 10 minute bus servicing and fueling[~~;~~

~~(b) field trip time: set at a minimum of two hours driving time;~~

~~(c) activity trip time: wage time allowed under R277-600-9A(2)(a) plus a reduced amount for layover time.~~];

B. [~~Transportation employee benefits. ~~]Only a proportionate amount [~~is allowed for health, accident, and life insurance~~]of a superintendent's or supervisor's employee benefits (health, accident, life insurance) may be paid from the school district's transportation fund[~~.~~];

C. Purchased property services;

D. Property, comprehensive, and liability insurance[~~.~~];

E. Communication expenses and travel for supervisors to workshops or the national convention[~~.~~];

F. Supplies and materials for vehicles, the school district transportation office and the garage[~~.~~];

G. Depreciation: The [~~Office~~]USOE computes an annual formula [~~annually to calculate~~]for school bus depreciation[~~.~~];

H. Training expenses[~~: The following maximum amounts are reimbursable for the driver's training stipend for each type of training a bus driver successfully completes:~~

~~(1) basic course, 24 hours: $135;~~

~~(2) in-service, 8 hours: $50;~~

~~(3) defensive driving, 8 hours: $50;~~

~~(4) first aid and emergency care, 8 hours: $50~~] to complete bus driver instruction and certification required by the Board[~~.~~]; and

I. Other related costs approved by the [~~Office~~]USOE which may include additional bus driver training.

R277-600-[10]9. Non-reimbursable Expenses.

A. AFR for all pupil transportation costs shall only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

[~~A~~]B. Expenditures for uses of school district buses and equipment which are not [~~adjusted/~~]approved APR to and from school pupil transportation costs [~~must~~]shall be deleted when [~~adjusted/approved~~] transportation costs are calculated. Bus and equipment costs [~~must~~]shall be reduced on a pro rata basis for the miles not connected with [~~adjusted/~~]approved costs.

[~~B~~]C. Expenses determined by the [~~Office~~]USOE to be not directly related to transportation of eligible students to and from school are not reimbursable.

D. Local boards may determine appropriate non-school uses of school buses. Local boards may lease/rent public school buses to federal, state, county, or municipal entities, and those insured by State Risk Management or to non-government entities or to those not insured through State Risk Management. In making these determinations, local boards shall:

(1) require full cost reimbursement for any non-public school use including:

(a) cost per mile;

(b) cost per minute;

(c) bus depreciation.

(2) require documentation from the non-school user of insurance through State Risk Management or private insurance coverage and a fully executed agreement for full release of indemnification;

(3) require that any non-school use is revenue neutral; and

(4) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

E. If a non-governmental entity or an entity not insured through State Risk Management requests the use of school bus(es), the use shall be approved by a local board in an open board meeting.

F. In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency. The local board shall grant the request so long as the use can be accommodated consistent with continuing student safety and transportation requirements.

R277-600-1[1]0. Special Transportation Levy.

A. Costs for school district transportation of students which are not reimbursable may be paid for from general funds of the school district or from the proceeds of a tax rate authorized for school districts. The tax rate authorized for transportation may not exceed .0003 tax rate. The revenue may be used:

(1) to transport ineligible students to and from school;

(2) for transportation to interscholastic activities;

(3) for transportation to night activities;[~~ and~~]

(4) for field trips[~~ admissions.~~]; and

(5) for the replacement of school buses.

B. Transportation of students in areas where walking constitutes a hazardous condition, as determined by the local board, may be provided [~~by the Board~~]from general funds from the school district or from the tax specified in [~~Subsection 11(A)~~]R277-600-10A. [~~An area is determined to be h~~]Hazardous [~~on the basis of~~]areas shall be determined by an analysis of the following factors:

(1) volume, type, and speed of vehicular traffic;

(2) age and condition of students traversing the area;

(3) condition of the roadway, sidewalks and applicable means of access in the area; and

(4) environmental conditions.

C(1) The cost of school bus operation for activity trips, field trips, and for the transportation of students to alleviate hazardous walking conditions may be met with state funds appropriated under Section 53A-17a-127([~~7~~]6) only to the extent of funds available to individual school districts for the specific purposes of Section 53A-17a-127(6)(b).

(2) Appropriated funds under Section 53A-17a-127([~~7~~]6) shall be distributed according to each school district's proportional share of its qualifying state contribution as defined under Section R277-600-1[~~1~~]0B(3) for activity, field trip, and hazardous route mileage.

(3) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by a transportation levy of .0002.

R277-600-1[~~2~~]1. Exceptions.

A. When undue hardships and inequities are created through exact application of these standards, school districts may [~~make a~~]request [~~for~~]an exception to these rules from the State Superintendent on individual cases. Such hardships or inequities may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation restrictions. The State Superintendent may consult with the Pupil Transportation Advisory Committee, designated in Section 53A-17a-127(5), in considering the exemption.

B(1) a school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route;

(2) there is an appreciable increase in cost if, because of the presence of ineligible students, any of the following occurs:

(a) another route is required;

(b) a larger or additional bus is required;

(c) a route's mileage is increased;

(d) the number of pick-up points below the mileage limits for eligible students exceeds one;

(e) significant additional time is required to complete a route.

(3) ineligible students may ride buses on a space available basis. An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

KEY: school buses, school transportation
Date of Enactment or Last Substantive Amendment: [~~September 15, 1999~~]2009
Notice of Continuation: January 8, 2008
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)([e]d); 53A-17a-126 and 127

♦ ♦

Education, Administration
R277-602
Special Needs Scholarships - Funding and Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32645
FILED: 05/01/2009, 14:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide procedures for increased notice requirements for students with individual education programs (IEP) about Carson Smith scholarships and to provide procedures for private schools that change ownership to reapply to the Utah State Board of Education and demonstrate that the private schools continue to meet the eligibility requirements of the Special Needs Scholarships Program consistent with H.B. 425, 2009 Legislative Session. (DAR NOTE: H.B. 425 (2009) is found at Chapter 197, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The amendments provide increased written notice requirements about Carson Smith scholarships for student with IEPs in Section R277-602-4, and new language for eligible private schools that change ownership in Section R277-602-6.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1a-706(5)(b) and Section 53A-1a-707

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The Utah State Office of Education has a website that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Written notice to students with IEPs is already a requirement within this rule. The amendments provide specific timelines.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses. There are no fees associated with an approved eligible private school that changes ownership to submit a new application to the Utah State Board of Education to demonostrate that the school continues to meet eligibility requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. An approved eligible private school that changes ownership will need to submit a new application to the Utah State Board of Education to demonstrate that the school continues to meet eligibility requirements, but there are no fees associated with applying and specifically no costs to students or parents.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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R277. Education, Administration.
R277-602. Special Needs Scholarships - Funding and Procedures.
R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that has previously served students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts and charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

E. School district and charter school notification to students with IEPs:

(1) School districts and charter schools shall provide written notice to parents or guardians of students who have an IEP of the availability of a scholarship to attend a private school through the Special Needs Scholarship Program.

(2) The written notice shall consist of the following statement: School districts and charter schools are required by Utah law, 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.[~~ Further information is available at www.schools.utah.gov/admin/specialneeds.htm.~~]

(3) The written notice shall be provided no later than 30 days after the student initially qualifies for an IEP.

(4) The written notice shall be provided annually no later than February 1 to all students who have IEPs.

(5) The written notice shall include the address of the Internet website maintained by the Board, http://www.schools.utah.gov/admin/specialneeds.htm, that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program.

(6) A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Internet website maintained by the Board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program on the school district's or school's website, if the school district or school has one.

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications by May 1 prior to the school year in which it intends to enroll scholarship students.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided to the USOE for purposes of determining student scholarship eligibility, or for verification of compliance upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

H. An approved eligible private school that changes ownership shall submit a new application for eligibility to receive Carson Smith scholarship payments from the Board; the application shall demonstrate that the school continues to meet the eligibility requirements of R277-602-6.

(1) The application for renewed eligibility shall be received from the school within 60 calendar days of the change of ownership.

(2) Ownership changes on the date that an agreement is signed between previous owner and new owner.

(3) If the application is not received by the USOE within the 60 days, the new owner/school is presumed ineligible to receive continued Carson Smith scholarship payments from the USOE and, at the discretion of the Board, the USOE may reclaim any payments made to a school within the previous 60 days.

(4) If the application is not received by the USOE within 60 days after the change of ownership, the school is not an eligible school and shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of R277-602.

KEY: special needs students, scholarships
Date of Enactment or Last Substantive Amendment: [~~July 11, 2006~~]2009
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1a-706(5)(b); 53A-3-410(6)(i)(c); 53A-1a-707; 53A-1-401(3)

♦ ♦

Education, Administration
R277-717-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32646
FILED: 05/01/2009, 14:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to changed the composition of the MESA Public Education Funding Application Review Committee to be able to fill all openings on the Committee.

SUMMARY OF THE RULE OR CHANGE: The amendment changes the composition of the MESA Public Education Funding Application Review Committee in the definitions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(c)(iv)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. A change to the composition of the Committee merely provides for more flexibility in filling openings on the Committee and does not cost or save funds.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. A change to the composition of the Committee merely provides for more flexibility in filling openings on the Committee and does not cost or save funds.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses. A change to the composition of the Committee merely provides for more flexibility in filling openings on the Committee and does not cost or save funds and does not involve small businesses or persons other than businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. A change to the composition of the Committee merely provides for more flexibility in filling openings on the Committee which does not require compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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R277. Education, Administration.
R277-717. Mathematics, Engineering, Science Achievement (MESA).
R277-717-1. Definitions.

A. "Annual report" means information and data identified under R277-717-3E provided by funding recipients to the Utah State Office of Education by June 30 of each year as a requirement for continued funding of the school or school district program.

B. "Board" means the Utah State Board of Education.

C. "Mathematics, Engineering, Science Achievement (MESA)" program means a course or courses offered during the regular school day or a club or activities held after school that involves identified students and addresses identified school district/charter school objectives with underserved ethnic minority and all female students consistent with funding purposes and the purposes of this rule. MESA programs, activities, and courses or classes may be offered at all grade levels. Programs should be coordinated among secondary schools/charter schools and their feeder schools.

D. "MESA Public Education Funding Application Review Committee (Committee)" means a funding advisory committee to the Board composed of nine members as follows:

(1) four Coalition of Minorities Advisory Committee (CMAC) representatives who are not employed by applicant districts[~~,~~]**.**;

(2) three school district[~~s~~]/charter school[~~s~~] representatives[~~, including only representatives of districts that are not applying for MESA funding during the current grant cycle,~~]or any combination of MESA community advocates, identified by the USOE, and school district representatives from districts that do not receive MESA funds; and

(3) two higher education representatives with expertise in mathematics, engineering, science or technology. USOE staff shall facilitate the funding application review process but shall not vote in any Committee decisions.

E. "Minority Students" means African American students, Asian students, American Indian students, Alaskan Native students, Native Hawaiian students, Hispanic students, Latino students, Pacific Islander students or other underserved ethnic minority students as proposed by the applicant.

F. "School District/Charter School or School Proposal" means a written proposal, including budget and evaluation components, developed by each school district/charter school applying for MESA funding or, if so determined by the district, by each recipient school.

G. "USOE" means the Utah State Office of Education.

KEY: minority education, mathematics, engineering, science
Date of Enactment or Last Substantive Amendment: [~~April 3, 2006~~]2009
Notice of Continuation: July 3, 2006
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-4-205; 53A-1-401(3)

Education, Administration
R277-733
Adult Education Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32647
FILED: 05/01/2009, 14:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes to the Adult Education Program budget formula in response to a State Legislative Audit on the Adult Education Program completed in August 2008.

SUMMARY OF THE RULE OR CHANGE: The amendments change the percentage and the criteria for which funds are allocated to local Adult Education programs consistent with findings from the State Legislative Audit of the Adult Education Program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Funding is provided and distribted to eligible Adult Education programs based on student outcomes.

❖ LOCAL GOVERNMENTS: There are minimal anticipated costs or savings to local government. Adult Education programs will continue to receive funding with increased funding based upon student outcomes. Some local programs will receive some increased funds for local Adult Education programs. Some programs will see reductions in local Adult Education program funds. Costs or savings are speculative.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses. This rule is applicable to public education Adult Education programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Adult Education programs will continue to receive funding based upon student outcomes. There are no increased or reduced costs for individual Adult Education students.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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R277. Education, Administration.
R277-733. Adult Education Programs.
R277-733-5. Fiscal Procedures.

A. State funds appropriated for adult education are allocated in accordance with Section 53A-17a-119.

B. No eligible school district shall receive less than its portion of an [~~seven~~]eight percent base amount of the state appropriation if:

(1) instructional services approved by the USOE have been provided to eligible adult students during the preceding fiscal year; or

(2) the school district is preparing to offer such services--such a preparation period may not exceed two years.

C. Lapsing and nonlapsing funds

(1) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules.

(2) State adult education funds which are allocated to school district adult education programs and are not expended in a fiscal year may be carried over to the next fiscal year with written approval by the USOE. These funds may be considered in determining the school district's allocation for the next fiscal year. Carried over funds shall be expended within the next fiscal year. If funds are not expended, they shall be recaptured by the USOE on February 1 of each program year, and reallocated to other school district adult education programs based on need and effort as determined by the Board consistent with Section 53A-17a-119(3).

D. The USOE shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern the state (legislative) and federal AEFLA adult education funded programs. The Utah Adult Education Policy and Procedures Guide (updated annually) including forms, procedures and guidelines is available on the USOE adult education website.

R277-733-10. Allocation of Adult Education Funds.

Adult education state funds shall be distributed to school districts offering adult education programs consistent with the following:

A. Base amount distributed equally to each participating school district with a Board-approved adult education plan and budget - [~~7~~]eight percent of appropriation.

B. Enrollee[~~s~~] status students (not participants) [~~as defined in R277-733-1L~~]- 25 percent of appropriation.

C. Contact hours (instructional and non-instructional) for both enrollee status students and participants - [~~16~~]18 percent of appropriation.

D. [~~Measurable outcomes, outlined below, based upon state funds, shall be distributed to school districts - 50 percent of appropriation as follows:~~

~~(1) number of enrollee status student~~]Adult Education Secondary Diplomas or Utah High School Completion Diplomas, whichever is awarded first.[~~awarded - 30 percent of the 50 percent available;~~

~~(2) number of enrollee certificates of GED awarded - 25 percent of the 50 percent available; Effective July 1, 2009, programs shall be funded based on the first obtained student outcomes; either a Utah High School Completion Diploma or Adult Education Secondary Diploma.~~]

[~~(3)~~]E. [~~number of e~~]Enrollee level gains: ESOL competency levels 1-6, ABE competency levels 1-4, and AHSC competency levels 1-2 - [~~30~~]20 percent[~~of the 50 percent available;~~].

[~~(4)~~]F. [~~number of e~~]Enrollee adult education completed secondary credits - [~~15~~]nine percent[~~of the 50 percent available~~].

[~~E~~]F. Supplemental support, to be distributed to school districts for special program needs or professional development, as determined by written request and USOE evaluation of need and approval - [~~2~~]three percent or balance of appropriation[~~, whichever is smaller~~].

(1) Any school district with pre-approved carryover adult education funds from the previous fiscal year may negotiate a request for supplemental funding as needed.

(2) [~~For the first quarter of the fiscal year (July through September) p~~]Priority of supplemental funding shall be given to school districts whose initial adult education allocation is less than [~~1~~]one percent of the state allotted total, as indicated on the state allocation table.

(3) Any balance of supplemental funds [~~after the first quarter of the fiscal year~~]may be applied for by all remaining eligible school districts.

[~~F~~]G. Funds, state (flow through) or federal (reimbursement) or both, may be withheld or terminated for noncompliance with state policy and procedures and associated reporting timelines as defined by the USOE.

KEY: adult education
Date of Enactment or Last Substantive Amendment: [~~March 10~~], 2009
Notice of Continuation: October 5, 2007
Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-15-401; 53A-1-402(1); 53A-1-401(3); 53A-1-403.5; 53A-17a-119; 53A-15-404

Health, Children's Health Insurance Program
R382-10
Eligibility

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32636
FILED: 04/30/2009, 17:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with the American Recovery and Reinvestment Act (ARRA) of 2009, the purpose of this change is to exclude certain types of income to determine Children's Health Insurance Program (CHIP) eligibility. In addition, in compliance with S.B. 2 passed during the 2009 General Session of the Utah State Legislature, the purpose of this amendment is to increase the quarterly premium for families with income between 151% and 200% of the federal poverty level and to add a late fee to families who are terminated because they do not pay their quarterly premium by the due date. (DAR NOTE: S.B. 2 (2009) is found at Chapter 396, Laws of Utah 2009, and will be effective 07/01/2009.)

SUMMARY OF THE RULE OR CHANGE: This change excludes certain types of income, recovery payments, and Consolidated Omnibus Reconciliation Act (COBRA) health insurance premium subsidies to determine CHIP eligibility. It further clarifies that children may receive CHIP benefits if their health plan does not provide coverage in Utah. It also increases the quarterly premium for families with income between 151% and 200% of the federal poverty level and adds a $15 late fee to families who are terminated because they do not pay their quarterly premiums on time. It also makes other clarifications.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-40-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Department estimates an annual cost of approximately $32,600 ($6,520 in state funds), based on approximately 20 additional children who will qualify for the CHIP program. In addition, there is a cost based on the "making work pay credit" for which some working individuals will qualify; however, there is insufficient data to determine how many individuals will qualify for this credit and what the total cost will be. A General Fund savings of approximately $82,000 will result from the increase in quarterly premiums, and the late fee assessed to families who do not pay these premiums by the due date. These fee changes were approved in the 2009 General Session of the Utah Legislature.

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not determine CHIP eligibility and do not fund or provide CHIP services.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Department estimates an annual savings of approximately $32,600 to the families of 20 additional children who will qualify for the CHIP program. In addition, there are savings based on the "making work pay credit" for which some working individuals will qualify; however, there is insufficient data to determine how many individuals will qualify for this credit and what the total savings will be. On the other hand, there is a total cost of $410,000 to CHIP families that results from the increase in quarterly premiums, and the late fee assessed to families that do not pay these premiums by the due date.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is a compliance cost of approximately $60 per year to a CHIP family that is affected by the increase in quarterly premiums. In addition, there is a late fee of $15 that is assessed to a CHIP family that does not pay the quarterly premium by the due date.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are necessary to comply with federal law and to stay within appropriations. David N. Sundwall, 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:
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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under [~~an absent parent's~~]health insurance [~~coverage~~]that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance that provides coverage in Utah in the 90 days prior to the application date for enrollment under CHIP. An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count as income any payments from sources that federal law specifically prohibit from being counted as income to determine eligibility for federally-funded programs.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse is not countable income.

(22) If the household expects to receive less than $500 per year in taxable interest and dividend income, then they are not countable income.

(23) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(24) The additional $25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, which an individual may receive from March 2009 through June 2010 is not countable income.

(25) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L .No. 111-5, 123 Stat. 115, for certain government retirees are not countable income.

(26) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L No.111-5, 123 Stat. 115, is not countable income.

(27) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, is not countable income.

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) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(5) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-20. 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 $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $[~~60~~]75.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP and assessed a $15 late fee. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium and the late fee 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 and late fees before the children can be re-enrolled.

KEY: children's health benefits
Date of Enactment or Last Substantive Amendment: [~~January 22~~], 2009
Notice of Continuation: May 19, 2008
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40

♦ ♦

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1-5

Incorporations by Reference

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32637
FILED: 04/30/2009, 17:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services. This change, therefore, incorporates the most current Medicaid State Plan by reference. It also implements by rule ongoing Medicaid policy for services described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List, and policy described in the hospital services provider manual. It further incorporates these manuals by reference.

SUMMARY OF THE RULE OR CHANGE: Subsection R414-1-5(2) is changed to update the incorporation of the State Plan by reference effective July 1, 2009. It also incorporates State Plan Amendments that become effective no later than July 1, 2009. The change further incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective July 1, 2009.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah Medicaid State Plan, July 1, 2009; Utah Medicaid Provider Manual, Medical Supplies Manual and List, July 1, 2009; and Hospital Services Provider Manual, July 1, 2009

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.

❖ LOCAL GOVERNMENTS: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of the State Plan by this rule assures that the Medicaid program is implemented through administrative rule. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-5. Incorporations by Reference.

(1) The Department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective [~~April~~]July 1, 2009. It also incorporates by reference State Plan Amendments that become effective no later than [~~April~~]July 1, 2009.

(2) The Department adopts the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, [~~April~~]July 1, 2009, as applied in Rule R414-70.

(3) The Department adopts the Hospital Services Provider Manual, effective [~~April~~]July 1, 2009.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~April 1~~], 2009
Notice of Continuation: April 16, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-1

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Health, Health Care Financing, Coverage and Reimbursement Policy
R414-14-5
Service Coverage

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32623
FILED: 04/30/2009, 16:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to reinstate physical therapy as a benefit of home health service for all Medicaid eligible adults.

SUMMARY OF THE RULE OR CHANGE: This change allows Medicaid eligible adults that receive home health services to have physical therapy included with prior authorization.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The increase of physical therapy will result in increased costs to the General Fund and to the federal budget. Estimates of these costs are listed in the companion filing to this proposed rule (Section R414-21-2). (DAR NOTE: The proposed amendment to Section R414-21-2 is under DAR No. 32619 in this issue, May 15, 2009, of the Bulletin.)

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide physical therapy services to Medicaid clients in the home.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Department estimates annual increases in revenue to providers of physical therapy. These estimates are listed in the companion filing to this proposed rule (Section R414-21-2). The explanation of annual savings to clients is also found in Section R414-21-2.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual increase in revenue to a single provider of physical therapy is listed in the companion filing to this proposed rule (Section R414-21-2). The explanation of annual savings to a client is also found in Section R414-21-2.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The 2009 Legislature appropriated funds to permit restoration of these services. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@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 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/26/2009 at 1:00 PM, Utah Department of Health, Cannon Health Building, 288 N 1460 W, Room 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-14. Home Health Services.
R414-14-5. Service Coverage.

1. Two levels of home health service are covered: Skilled Home Health Care and Supportive Maintenance Home Health Care.

2. Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

3. Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions and provides necessary care for the patient.

4. Supportive maintenance home health care serves those patients who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching, or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

5. IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the medical supplies program and all requirements of the home health program must be met in relation to orders, plan of care, and 60 day review and recertification.

6. Physical therapy and speech pathology services are occasionally indicated and approved for the patient needing home health service. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care. [~~Physical therapy, o~~]Occupational therapy and speech pathology services in the home are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

7. Medical supplies utilized for home health service must be suitable for use in the home in providing home health care, consistent with physician orders, and approved as part of the plan of care.

8. Medical supplies provided by the home health agency do not require prior approval, but are limited to:

(a) supplies used during the initial visit to establish the plan of care;

(b) supplies that are consistent with the plan of care; and

(c) non-durable medical equipment.

9. Supportive maintenance home health care is limited in time equal to one visit per day determined by care needs and care giver participation.

10. A registered nurse employed by an approved, certified home health agency must supervise all home health services. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

11. Only one home health provider (agency) may provide service to a patient during any period of time. However, a subcontractor of a

home health provider may provide service if the original agency is the only provider that bills for services. A second provider or agency requesting approval of service will be denied.

12. Home health care provided to a patient capable of self care is not a covered Medicaid benefit.

13. Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

14. Housekeeping or homemaking services are not covered home health benefits.

15. Occupational therapy is not a covered Medicaid benefit except for children covered under CHEC for medically necessary service.

16. Home health nursing service beyond the initial evaluation visit requires prior authorization.

17. All home health service beyond the initial visit, including supplies and therapies, shall be in the plan of care that the home health agency submits for prior authorization. Prior to providing the service, the home health agency must first obtain approval for the level of skilled or maintenance service based on the prior authorization request and a review of the plan of care. If level of service needs change, the home health agency must submit a new prior authorization request.

18. A home health agency may provide therapy services only in accordance with medical necessity and after receiving prior authorization.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~February 24~~], 2009
Notice of Continuation: October 6, 2004
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-21-2

Eligibility Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32619
FILED: 04/30/2009, 16:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to reinstate physical therapy and occupational therapy services to eligible adult Medicaid clients.

SUMMARY OF THE RULE OR CHANGE: This change reinstates physical therapy and occupational therapy services to eligible adult Medicaid clients.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Department estimates an annual cost of $76,000 to the General Fund and $185,600 in federal dollars as a result of this change

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide physical and occupational therapy to Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Providers of physical therapy and occupational therapy will see a combined increase in annual revenue of $261,600 as a result of this change. The total savings to Medicaid clients is difficult to estimate because it is impossible to know how many clients would elect to obtain these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual increase in revenue to a single provider of physical therapy is approximately $774, while the annual increase in revenue to a single provider of occupational therapy is approximately $1,480. These estimates are based on the total number of providers and client visits per year. The total savings to Medicaid clients is difficult to estimate because it is impossible to know how many clients would elect to obtain these services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Appropriations from the 2009 Legislature allowed reinstatement of these services. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/26/2009 at 1:00 PM, Utah Department of Health, Cannon Health Building, Room 114.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-21. Physical and Occupational Therapy.
R414-21-2. Eligibility Requirements.

Physical therapy and occupational therapy services are available [~~only~~]to [~~clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program. In addition, physical therapy and occupational therapy services are available to a client as a component of inpatient or outpatient hospital services~~]categorically and medically needy individuals under Medicaid when received from an independent occupational therapist or an independent physical therapist including group practices, rehabilitation centers, and hospitals.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~February 24~~], 2009
Notice of Continuation: April 16, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-49

Dental Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32617
FILED: 04/30/2009, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2009 General Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to receive dental services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is a savings of approximately $2,000,000 to the General Fund and approximately $5,000,000 in federal dollars.

❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not fund or provide dental services to Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The providers of dental services lose approximately $7,000,000 in annual revenue as a result of this change. However, the total out-of-pocket expense to Medicaid clients who elect to pay out-of-pocket is difficult to estimate because it is impossible to know how many clients would elect to obtain these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single provider of dental services loses approximately $14,009 in annual revenue, based on the total number of providers and client visits per year. The average Medicaid cost per client for dental care is about $250. This change will require each Medicaid client who obtains this service to pay out-of-pocket about $600 for the same care.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The 2009 Legislature did not appropriate funds to permit continuation of these services. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/26/2009 at 1:00 PM, Utah Department of Health, Cannon Health Building, Room 114.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental Services.
R414-49-3. Client Eligibility Requirements.

Dental services are available [~~to categorically and medically needy clients~~]only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

R414-49-5. Service Coverage.

Specific services are identified for [~~adults~~]pregnant women and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only[~~ for either a child or an adult~~].

(b) A limited problem-focused oral evaluation[~~ for a child or an adult~~].

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) [~~Adult~~]Pregnant Women: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for [~~adults~~]pregnant women.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth[~~, or permanent second molars for adults~~].

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions[~~ for adults and children~~].

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) [~~Adult~~]Pregnant Women: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Prior authorization is required for gingivectomies, full mouth debridements, dentures, partial dentures, porcelain to metal crowns and general anesthesia procedures.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~July 1, 2005~~]2009
Notice of Continuation: November 12, 2004
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-50-3

Client Eligibility Requirements

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 32622
FILED: 04/30/2009, 16:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2009 General Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to receive oral and maxillofacial surgery services. It also clarifies that services performed by an oral surgeon are still available to all categorically and medically needy clients.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The reduction of oral and maxillofacial surgery services will result in savings to the General Fund and to the federal budget. Estimates of these savings are listed in the companion filing to this proposed rule (Rule R414-49). (DAR NOTE: The proposed amendment to Rule R414-49 is under DAR No. 32617 in this issue, May 15, 2009, of the Bulletin.)

❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not fund or provide oral and maxillofacial surgery services to Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Department estimates annual losses in revenue to providers of oral and maxillofacial surgery services. Estimates of these savings are listed in the companion filing to this proposed rule (Rule R414-49).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of oral and maxillofacial surgery services is listed in the companion filing to this proposed rule (Rule R414-49).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The 2009 Legislature did not appropriate funds to permit continuation of these services. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/26/2009 at 1:00 PM, Utah Department of Health, Cannon Health Building, Room 114.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-50. Dental, Oral and Maxillofacial Surgeons.
R414-50-3. Client Eligibility Requirements.

Oral and maxillofacial surgery service<u>s</u> [~~is~~]<u>are</u> available [~~to categorically and medically needy clients who are ages 20 and younger or who are pregnant. Dental services to non-pregnant adults ages 21 and older are limited to emergency services only~~]<u>only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Nevertheless, physician, medical and surgical services performed by an oral surgeon are available to all categorically and medically needy clients.</u>

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~January 28, 2004~~]<u>2009</u>
Notice of Continuation: November 3, 2004
Authorizing, and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy
R414-51
Dental, Orthodontia

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32625
FILED: 04/30/2009, 16:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2009 General Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to receive dental and orthodontia services. It also removes one of the limitations for these services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The reduction of orthodontia services will result in savings to the General Fund and to the federal budget. Estimates of these savings are listed in the companion filing to this proposed rule (Rule R414-49). (DAR NOTE: The proposed amendment to Rule R414-49 is under DAR No. 32617 in this issue, May 15, 2009, of the Bulletin.)
❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not fund or provide orthodontia services to Medicaid clients.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Department estimates annual losses in revenue to providers of orthodontia services. Estimates of these savings are listed in the companion filing to this proposed rule (Rule R414-49).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of orthodontia services is listed in the companion filing to this proposed rule (Rule R414-49).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The 2009 Legislature did not appropriate funds to permit continuation of these services. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/26/2009 at 1:00 PM, Utah Department of Health, Cannon Health Building, 288 N 1460 W, Room 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-51. Dental, Orthodontia.
R414-51-1. Introduction and Authority.

(1) The Medicaid Orthodontia Program provides orthodontia services for Medicaid eligible children who have a handicapping malocclusion as a result of birth defects, accident, or abnormal growth patterns, and for Medicaid eligible [~~adults~~]pregnant women who have a handicapping malocclusion as a result of a recent accident or disease, of such severity that they are unable to masticate, digest, or benefit from their diet.

(2) Orthodontia services are authorized by 42 CFR 440.100(a), 440.225, 441.56(b)(2), 441.57, October, 1997 ed, which are adopted and incorporated by reference.

R414-51-3. Client Eligibility Requirements.

Orthodontia services are available [~~for Medicaid eligible recipients~~]only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

R414-51-4. Program Access Requirements.

(1) Orthodontia services are available to children who meet the requirements of having a handicapping malocclusion identified in an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) exam.

(2) The Department shall determine the medical necessity for orthodontia services for each individual whether a child or [~~adult~~]a pregnant woman based upon:

(a) the evaluation of the malocclusion using the Salzmann's Index from models of the teeth submitted by the dentist or orthodontist; and

(b) evidence of medical necessity provided by the primary dentist, the orthodontist, or the physician.

(3) The primary care physician, or the physician or dentist who completes the EPSDT screening examination, may contribute information pertaining to the medical necessity for services.

(4) Qualified Providers.

Dentists, oral and maxillofacial surgeons, and orthodontists may provide any part of the orthodontic services for which they are qualified.

R414-51-6. Limitations.

Orthodontia is not a Medicaid benefit for:

(1) cosmetic or esthetic reasons;

(2) treatment of any temporo-mandibular joint condition or dysfunction;

(3) conditions in which radiographic evidence of bone loss has been documented[~~;~~].[

~~(4) an adult whose handicapping malocclusion resulted from an accident or disease occurring more than one year from the date of request for services.~~]

KEY: Medicaid, dental, orthodontia
Date of Enactment or Last Substantive Amendment: [~~January 28, 2004~~]2009
Notice of Continuation: May 19, 2008
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

♦ ♦

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-54-3
Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32638
FILED: 04/30/2009, 17:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Speech-Language Pathology Services Provider Manual, effective July 1, 2009.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Speech-Language Pathology Services Provider Manual, effective July 1, 2009.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Speech-Language Pathology Services Provider Manual, July 1, 2009

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Pathology Services Provider Manual does not create costs or savings to the Department or other state agencies.
❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide speech-language pathology services to Medicaid clients.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Pathology Services Provider Manual does not create costs or savings to other persons and small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Speech-Language Pathology Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative rule. David N. Sundwall, MD, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-54. Speech-Language Pathology Services.
R414-54-3. Services.

(1) Speech-language pathology services are optional.

(2) Speech-language pathology services are limited to services described in the Speech-Language Pathology Services Provider Manual, effective [~~April~~]July 1, 2009, which is incorporated by reference.

(3) The Speech-Language Pathology Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

KEY: Medicaid, speech-language pathology services
Date of Enactment or Last Substantive Amendment: [~~April 1~~], 2009
Notice of Continuation: March 9, 2009
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-59-4
Client Eligibility Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32639
FILED: 04/30/2009, 17:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Audiology Provider Manual, effective July 1, 2009.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Audiology Provider Manual, effective July 1, 2009.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Audiology Provider Manual, July 1, 2009

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Provider Manual does not create costs or savings to the Department or other state agencies.

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide audiology services to Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Provider Manual does not create costs or savings to other persons and small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Audiology Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative rule. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-59. Audiology-Hearing Services.
R414-59-4. Client Eligibility Requirements.

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Provider Manual, effective [~~April~~]July 1, 2009, which is incorporated by reference.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Provider Manual and obtain prior approval if required.

KEY: Medicaid, audiology
Date of Enactment or Last Substantive Amendment: [~~April 1~~], 2009
Notice of Continuation: November 22, 2005
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

♦ ♦

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-200
Non-Traditional Medicaid Health Plan Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32621
FILED: 04/30/2009, 16:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to reinstate physical therapy and occupational therapy services to eligible Non-Traditional Medicaid clients.

SUMMARY OF THE RULE OR CHANGE: This rule change restores physical therapy and occupational therapy services to Non-Traditional Medicaid clients.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The restoration of physical therapy and occupational therapy will result in increased costs to the General Fund and to the federal budget. Estimates of these costs are listed in the companion filing to this proposed rule (Section R414-21-2). (DAR NOTE: The proposed amendment to Section R414-21-2 is under DAR No. 32619 in this issue, May 15, 2009, of the Bulletin.)

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide physical therapy and occupational therapy services to Non-Traditional Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Department estimates an annual increase in revenue to providers of physical therapy and occupational therapy services. These estimates are listed in the companion filing to this proposed rule (Section R414-21-2). The explanation of annual savings to clients who elect to pay out-of-pocket to receive physical therapy and occupational therapy is also found in the companion filing to this proposed rule (Section R414-21-2).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual increase in revenue to a single provider of physical therapy and occupational therapy is listed in the companion filing to

this proposed rule (Section R414-21-2). The explanation of annual savings to a client who elects to pay out-of-pocket to receive physical therapy and occupational therapy services is also found in the companion filing to this proposed rule (Section R414-21-2).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The 2009 Legislature appropriated funds to permit restoration of these services. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@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 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/26/2009 at 1:00 PM, Utah Department of Health, Cannon Health Building, 288 N 1460 W, Room 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-200. Non-Traditional Medicaid Health Plan Services.
R414-200-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the NTHP.

(a) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(3) The following services, as more fully described and limited in provider contracts and provider manuals; are available to Non-Traditional Medicaid Health Plan enrollees:

(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;

(b) outpatient hospital services which are medically necessary diagnostic, therapeutic, preventive, or palliative care provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;

(c) emergency services in dedicated hospital emergency departments;

(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of the physician or osteopath.

(e) services associated with surgery or administration of anesthesia provided by physicians or licensed certified nurse anesthetists;

(f) vision care services by licensed ophthalmologists or licensed optometrists, within their scope of practice; limited to one annual eye examination or refraction and no eyeglasses.

(g) laboratory and radiology services provided by licensed and certified providers;

(h) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;

(i) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;

(j) hospice services provided by a Medicare-certified hospice to terminally ill enrollees (six month or less life expectancy) who elect palliative versus aggressive care;

(k) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;

(l) certain organ transplants;

(m) services provided in freestanding emergency centers, surgical centers and birthing centers;

(n) transportation services, limited to ambulance (ground and air) service for medical emergencies;

(o) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;

(p) family planning services provided by or authorized by a physician, certified nurse midwife, or nurse practitioner to the extent permitted by federal and state law;

(q) pharmacy services provided by a licensed pharmacy;

(r) inpatient mental health services, limited to 30 days per enrollee per calendar year;

(s) outpatient mental health services, limited to 30 visits per enrollee per calendar year;

(t) outpatient substance abuse services;

(u) dental services are not covered;[~~and~~]

(v) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;

(w) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to ten aggregated physical or occupational therapy visits per calendar year; and

(x) occupational therapy services provided for fine motor development, limited to ten aggregated physical or occupational therapy visits per year.

(4) Emergency services are:

(a) limited to attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) not related to an organ transplant procedure.

(5) The vision care benefit is limited to $30 per year.

R414-200-4. Cost Sharing.

(1) An enrollee is responsible to pay to the:

(a) hospital a $220 co-insurance payment for each inpatient hospital admission;

(b) hospital a $6 copayment for each non-emergency use of hospital emergency services;

(c) provider a $3 copayment for outpatient office visits for physician, physician-related, [~~and~~]mental health services, physical therapy, and occupational therapy services; except, no copayment is due for preventive services, immunizations and health education; and

(d) pharmacy a $3 copayment per prescription for prescription drugs.

(2) The out-of-pocket maximum payment for copayments or co-insurance is limited to $500 per enrollee per calendar year.

KEY: Medicaid, non-traditional, cost sharing
Date of Enactment or Last Substantive Amendment: [~~February 24~~], 2009
Notice of Continuation: May 24, 2007
Authorizing, and Implemented or Interpreted Law: 26-18

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-310

Medicaid Primary Care Network Demonstration Waiver

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32626
FILED: 04/30/2009, 16:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with the American Recovery and Reinvestment Act (ARRA) of 2009, the purpose of this change is to exclude certain types of income to determine Primary Care Network (PCN) eligibility.

SUMMARY OF THE RULE OR CHANGE: This change excludes certain types of income, recovery payments, and Consolidated Omnibus Reconciliation Act (COBRA) health insurance premium subsidies to determine PCN eligibility.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is a nominal cost to the state budget based on the "making work pay credit" for which some working individuals will qualify. Nevertheless, there is insufficient data to determine how many individuals will qualify for this credit and what the total cost will be. Otherwise, there is no budget impact because the income that is excluded to determine PCN eligibility was not available to individuals before Congress enacted ARRA.

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not determine PCN eligibility and do not fund or provide PCN services.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are nominal savings to working individuals who will qualify for the "making work pay credit." under ARRA. Nevertheless, there is insufficient data to determine how many individuals will qualify for this credit and what the total cost will be. Otherwise, there is no budget impact because the income that is excluded to determine PCN eligibility was not available to individuals before Congress enacted ARRA.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not require anyone to pay more for PCN coverage and it does not change the eligibility status of an individual recipient. Further, this change will only provide savings to an individual who qualifies for "making work pay credit."

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are necessary to comply with federal law and to stay within appropriations. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-9. Age Requirement.

(1) An individual must be at least 19 and not yet 65 years of age to enroll in the Primary Care Network program.

(2) The month in which an individual's 19th birthday occurs is the first month the person can be eligible for enrollment in the Primary Care Network program.

(a) If the individual could qualify for Medicaid in that month without paying a spenddown or premium, the individual cannot enroll in the Primary Care Network program until the following month.

(b) If the individual could enroll in the Children's Health Insurance Program[~~ and it is an open enrollment period for CHIP for that month~~], the individual cannot enroll in the Primary Care Network program until the following month.

(3) The benefit effective date for the Primary Care Network program cannot be earlier than the date of the 19th birthday.

(4) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the Primary Care Network program.

R414-310-10. Income Provisions.

(1) To be eligible to enroll in the Primary Care Network program, a household's countable gross income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under the Primary Care Network program. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(2) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the Primary Care Network.

([~~2~~]3) Any income in a trust that is available to, or is received by a household member, is countable income.

([~~3~~]4) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

([~~4~~]5) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

([~~5~~]6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

([~~6~~]7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

([~~7~~]8) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

([~~8~~]9) Child support payments received for a dependent child living in the home are counted as that child's income.

([~~9~~]10) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

([~~10~~]11) Supplemental Security Income and State Supplemental payments are countable income.

([~~11~~]12) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public assistance.

([~~12~~]13) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

([~~13~~]14) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

([~~14~~]15) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

([~~15~~]16) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

([~~16~~]17) Child Care Assistance under Title XX is not countable income.

([~~17~~]18) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

([~~18~~]19) Earned and unearned income of a child who is under age 19 is not counted if the child is not the head of a household.

([~~19~~]20) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

([~~20~~]21) Reimbursements for employee work expenses incurred by an individual are not countable income.

([~~21~~]22) The value of food stamp assistance is not countable income.

([~~22~~]23) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(24) The additional $25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, which an individual may receive from March 2009 through June 2010 is not countable income.

(25) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section

2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L .No. 111-5, 123 Stat. 115, for certain government retirees are not countable income.

(26) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L No.111-5, 123 Stat. 115, is not countable income.

(27) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, is not countable income.

KEY: Medicaid, primary care, covered-at-work, demonstration
Date of Enactment or Last Substantive Amendment: [~~January 22~~], 2009
Notice of Continuation: June 13, 2007
Authorizing, and Implemented or Interpreted Law: 26-18-1; 26-1-5; 26-18-3

♦ ♦

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-320

Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32629
FILED: 04/30/2009, 16:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with the American Recovery and Reinvestment Act (ARRA) of 2009, the purpose of this change is to exclude certain types of income to determine Utah's Premium Partnership for Health Insurance (UPP) eligibility.

SUMMARY OF THE RULE OR CHANGE: In accordance with ARRA requirements, this change excludes certain types of income, recovery payments, and Consolidated Omnibus Reconciliation Act (COBRA) health insurance premium subsidies to determine UPP eligibility. It further clarifies and updates the application procedure to determine the effective date of enrollment in the UPP program.

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 a nominal cost to the state budget based on the "making work pay credit" for which some working individuals will qualify. Nevertheless, there is insufficient data to determine how many individuals will qualify for this credit and what the total cost will be. Otherwise, there is no budget impact because the income that is excluded to determine UPP eligibility was not available to individuals before Congress enacted ARRA.

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not determine UPP eligibility and do not fund or provide UPP services.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are nominal savings to working individuals who will qualify for the "making work pay credit" under ARRA. Nevertheless, there is insufficient data to determine how many individuals will qualify for this credit and what the total cost will be. Otherwise, there is no budget impact because the income that is excluded to determine UPP eligibility was not available to individuals before Congress enacted ARRA.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not require anyone to pay more for UPP coverage and it does not change the eligibility status of an individual recipient. Further, this change will only provide savings to an individual who qualifies for "making work pay credit".

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are necessary to comply with federal law and to stay within appropriations. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-10. Income Provisions.

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(4) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the UPP program.

([~~4~~]5) Any income in a trust that is available to, or is received by a household member, is countable income.

([~~5~~]6) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

([~~6~~]7) Rental income is countable income. The following expenses can be deducted:

(a) Taxes and attorney fees needed to make the income available;

(b) Upkeep and repair costs necessary to maintain the current value of the property;

(c) Utility costs only if they are paid by the owner; and

(d) Interest only on a loan or mortgage secured by the rental property.

([~~7~~]8) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

([~~8~~]9) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

([~~9~~]10) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

([~~10~~]11) Child support payments received for a dependent child living in the home are counted as that child's income.

([~~11~~]12) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

([~~12~~]13) Supplemental Security Income and State Supplemental payments are countable income.

([~~13~~]14) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

([~~14~~]15) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

([~~15~~]16) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

([~~16~~]17) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

([~~17~~]18) Child Care Assistance under Title XX is not countable income.

([~~18~~]19) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

([~~19~~]20) Earned and unearned income of a child is not countable income if the child is not the head of a household.

([~~20~~]21) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

([~~21~~]22) Reimbursements for employee work expenses incurred by an individual are not countable income.

([~~22~~]23) The value of food stamp assistance is not countable income.

([~~23~~]24) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(25) The additional $25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, which an individual may receive from March 2009 through June 2010 is not countable income.

(26) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L .No. 111-5, 123 Stat. 115, for certain government retirees are not countable income.

(27) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L No.111-5, 123 Stat. 115, is not countable income.

(28) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, is not countable income.

R414-320-13. Application Procedure.

(1) The application is the initial request from an applicant for UPP enrollment. The application process includes gathering information and verifications to determine the individual's eligibility for enrollment.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the UPP program.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the UPP program. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The date of application [~~will be decided as follows:~~]is the day the agency receives a signed application form at a local office by the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile

transmission, and electronic applications sent via the internet. If a local office receives an application after the close of business on a business day, the date of application is the next business day.

[~~(a) The date the Department receives a completed, signed application is the application date when the application is delivered to a local office.~~

~~(b) The date postmarked on the envelope is the application date when a completed, signed application is mailed to the agency.~~

~~(c) The date the Department receives a completed, signed application via facsimile transfer is the application day. The agency accepts the signed application sent via facsimile as a valid application and does not require it to be signed again.~~

~~(d) The transaction date is the application date when the application is submitted online.~~](4) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(5) The due date for verification needed to complete an application and determine eligibility is the close of business on the last day of the application period.

([~~4~~]6) If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

([~~5~~]7) The Department shall reinstate a UPP case without requiring a new application if the case was closed in error.

([~~6~~]8) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) If the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) The individual continues to meet all eligibility requirements.

([~~7~~]9) An applicant may withdraw an application any time before the Department completes an eligibility decision on the application.

([~~8~~]10) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.

(a) Benefits for the new household member will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new income test is not required to add the new household member for the months remaining in the current certification period.

(c) A new household member may be added only if the Department has not stopped enrollment under Section R414-320-15.

(d) Income of the new member will be considered at the next scheduled recertification.

([~~9~~]11) 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 UPP without waiting for the next open enrollment period.

([~~10~~]12) 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 UPP without waiting for the next open enrollment period.

([~~11~~]13) A new child born to or adopted by an enrollee may be enrolled in UPP without waiting for the next open enrollment period.

R414-320-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment is the day that a completed and signed application is received at a local office [~~by the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the close of business on a business day, the effective date of UPP enrollment is the next business day~~]as defined in Subsections R414-320-13(3) and R414-320-13(4)(a) and (b), and the applicant meets all eligibility criteria and enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.[

~~(2) The application date for applications delivered to an outreach location is as follows:~~

~~(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.~~

~~(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.~~

~~(3) The due date for verifications needed to complete an application and determine eligibility is the close of business on the last day of the application period.~~]

([~~4~~]2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium for the employer-sponsored health insurance. The applicant must enroll in the employer-sponsored health insurance no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant does not enroll in the employer-sponsored health insurance within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

([~~5~~]3) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

([~~6~~]4) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

([~~7~~]5) If the enrollee does not complete the recertification as described in R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

([~~8~~]6) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns age 65;

(b) The individual becomes entitled to receive Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) The individual dies;

(d) The individual moves out of state or cannot be located;

(e) The individual enters a public institution or an Institute for Mental Disease.

([~~9~~]7) If an adult enrollee discontinues enrollment in employer-sponsored insurance coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily and the individual notifies the local office within 10 calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

([~~10~~]8) A child enrollee may discontinue employer-sponsored health insurance and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

([~~11~~]9) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan may switch to the UPP program if the individual reports to the local office within 10 calendar days of enrolling in an employer-sponsored plan and before coverage on the employer-sponsored plan begins.

([~~12~~]10) If a UPP case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

([~~13~~]11) If a UPP case closes because the enrollee is eligible for another Medicaid program or the Children's Health Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

KEY: Medicaid, [~~PCN, CHIP~~]UPP
Date of Enactment or Last Substantive Amendment: [~~January 22~~], 2009
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

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Health, Health Care Financing, Coverage and Reimbursement Policy
R414-401-3
Assessment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32631
FILED: 04/30/2009, 17:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The 2009 Utah Legislature increased appropriations for this program through an increase to the assessment on Medicaid beds in nursing facilities and Intermediate Care Facilities for the Mentally Retarded (ICF/MRs). This change implements that assessment increase.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), nonintermediate care facilities for the mentally retarded are assessed at the uniform rate of $10.20 per patient day, which is an increase from the previous $8.96 per patient day assessment. Intermediate care facilities for the mentally retarded are assessed at the uniform rate of $6.53 per patient day, which is an increase from the previous $5.52 per patient day assessment. This change becomes effective July 1, 2009. This increase in assessment allows for the appropriated increase in reimbursement rates.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Budget neutral due to collection of $2,300,000 from nursing and swing bed facilities and $200,000 from intermediate care facilities for the mentally retarded, and an increase in state funded reimbursement of $2,300,000 to nursing and swing bed facilities and $200,000 to intermediate care facilities for the mentally retarded.

❖ LOCAL GOVERNMENTS: Local intermediate care facilities for the mentally retarded will see a net increase in revenue of $500,000 due to increased federal funding. Local hospitals with swing beds will also see increased revenue due to increased federal funding. Funding will be applied for swing bed reimbursement rates beginning in calendar year 2010. Inasmuch as swing beds are variable, it is not possible to determine the additional funding that will be made available to these facilities.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Nursing facility providers for small businesses will see a net enhanced revenue of approximately $400,000 as a result of increased federal matching funds. In addition, there is an estimated increase in cost of $12,879 to non-Medicaid certified facilities, based on four facilities and an estimated number of 10,579 patient days.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of $1.24 per non-Medicare patient day from each nursing facility or a total of $2,300,000, and an increased collection of $1.01 per non-Medicare patient day from each ICF/MR for a total of $200,000. This collection will be used as state funds to draw down about $6,300,000 in federal funds. All Medicaid certified nursing and swing bed facilities will gain from this process. The amount of gain depends on the number of Medicaid patients in the facility. In addition, there is an average cost of $3,220 to four non-Medicaid certified facilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Facilities will be assessed $2,500,000, which will be matched with $6,300,000 in federal funds and generate total additional reimbursement of $8,800,000 to the Medicaid certified facilities in these two classes. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is $[~~8.96~~]10.20 per non-Medicare patient day provided by the facility, except that intermediate care facilities for the mentally retarded shall be assessed at the uniform rate of $[~~5.52~~]6.53 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

KEY: Medicaid, nursing facility
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2009
Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a

♦ ♦

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-504
Nursing Facility Payments

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32633
FILED: 04/30/2009, 17:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the Quality Improvement Incentive programs.

SUMMARY OF THE RULE OR CHANGE: This amendment adds new state fiscal year 2010 Quality Incentive programs.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no budget impact because the changes to this rule do not alter the overall amount of state and federal funds that regulated health care facilities may receive.
❖ LOCAL GOVERNMENTS: There is no budget impact because the changes to this rule do not alter the overall amount of state and federal funds that local government operated health care facilities may receive.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The amendments impact small and large businesses equally. The aggregate paid to Medicaid certified nursing homes does not change because of the amendments. Nursing homes that take advantage of the incentives will receive more than nursing homes that do not. The total incentive amount available to nursing homes is $5,475,900, which is reserved from the base rate budget for nursing homes. The incentives

positively impact the treatment that nursing home residents receive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because there are only increases in funds for a nursing facility that takes advantage of the quality improvement incentives that are available.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Applying for these programs is voluntary and should have a positive fiscal impact. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the fair rental value (FRV) established by this rule.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13)(a) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(b) "Rural provider" means a facility that is not an urban provider.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, Certification, and Resident Assessment, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity.

(16) "Bed Addition" means, as used in the fair rental value calculation, a capitalized project that adds additional beds to the facility. This must be new and complete construction. An increase in total licensed beds and new construction costs support a claim of additional beds.

(17) "Bed Replacement" means, as used in the fair rental value calculation, a capitalized project that furnishes a bed in the place of another, previously existing, bed. Room remodeling is not a replacement of beds. This must be new and complete construction.

(18) "Major Renovation" means, as used in the fair rental value calculation, a capitalized project with a cost equal to or greater than $500 per licensed bed. A renovation extends the life, increases the productivity, or significantly improves the safety (such as by asbestos

removal) of a facility as opposed to repairs and maintenance which either restore the facility to, or maintain it at, its normal or expected service life. Vehicle costs are not a major renovation capital expenditure.

R414-504-4. Quality Improvement Incentive.

(1) The incentive period is from July 1, [~~2008,~~]2009 through [~~June 30, 2009~~]May 31, 2010.

(2) In order for a facility to qualify for any Quality Improvement Incentive or initiative in subsections (3) or (4):

(a) The [~~Department must receive the~~]application form and all supporting documentation for that Incentive or Initiative must be faxed in or mailed with a postmark during[~~no later than June 8 in~~] the incentive period. Failure to include all required supporting documentation precludes a facility from qualification.[~~Please note that a postmark is not sufficient, all documentation must be physically received in the Department by the June 8 deadline.~~]

(b) Facilities choosing to mail in applications and supporting documentation are responsible to ensure that documents are mailed to the correct address, as follows:

Via United States Postal Service
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service or Federal Express
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(c) The facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

(3)(a) Upon federal approval of the Nursing Care Facilities State Plan Amendment for the quality program outlined in this subsection (3), funds in the amount of $1,000,000 shall be set aside from the base rate budget annually to reimburse non-ICF/MR facilities that have:

(i) a meaningful quality improvement plan which includes the involvement of residents and family;

(ii) a demonstrated process of assessing and measuring that plan;

(iii) customer satisfaction surveys conducted by an independent third-party in each quarter of the incentive period, along with an action plan addressing survey items rated below average for the year;

(iv) a plan for culture change along with an example of how the facility has implemented culture change;

(v) an employee satisfaction program;

(vi) no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent re-certification survey and during the incentive period;

(vii) a facility that receives a substandard quality of care level F, H, I, J, K, or L during the incentive period is eligible for only 50% of the possible reimbursement. A facility receiving substandard quality of care level F, H, I, J, K, or L in more than one survey during the incentive period is ineligible for reimbursement under this incentive.

(b) The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities.

(c) If a facility seeks administrative review of the determination of a survey violation, the incentive payment will be withheld pending the final administrative adjudication. If violations are found not to have occurred, the incentive payment will be paid to the facility. If the survey findings are upheld, the remaining incentive payments will be distributed to all qualifying facilities.

(4) Upon federal approval of the Nursing Care Facilities State Plan Amendment for the quality program outlined in this subsection (4) and in addition to the above incentive, funds in the amount of $4,275,900 shall be set aside from the base rate budget in state fiscal year [~~2009~~]2010 for use in state fiscal year [~~2009~~]2010.[~~for the following quality improvement initiatives:~~]

(a) Qualifying Medicaid providers may receive up to $590.43 total, across all initiatives in Subsection R414-504-4(4), for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive and for each initiative in this incentive is the count in the facility as at the beginning of the incentive period.

(b) A facility may not receive more for any initiative than its documented costs for that initiative.

(c) In order to qualify for any of the quality improvement initiatives in Subsection R414-504-4(4)(d):

(i) Each item purchased under initiatives (i) through (iii) of Subsection R414-504-4(4)(d) must be purchased by the end of the incentive period, and installed during the incentive period. Each item purchased under initiatives (iv) to (ix) of Subsection R414-504-4(d) must be purchased by the end of the incentive period, and installed between July 1, 2008, and May 31, 2010.

(ii) A facility, with its application, must submit a detailed description of the functionality of each item purchased, attesting to its meeting all of the criteria for that initiative.

(iii) A facility, with its application, must submit detailed documentation supporting all purchase, installation and training costs for the initiative. This documentation must include invoices and proof of purchase (i.e. copies of cancelled checks, credit card slips, etc.).

(iv) A facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

(d) Each Medicaid provider may apply for the following quality improvement initiatives:

([~~a~~]i) Incentive for facilities to purchase or enhance nurse call systems. Qualifying Medicaid providers may receive up to [~~$390.51~~]$391 for each Medicaid certified bed.[~~The Medicaid certified bed count used for each facility for this incentive is the count in the facility as of July 1, 2008.~~

~~(i)~~] Qualifying criteria include the following:

(A) The nurse call system[~~that~~] is compliant with approved "Guidelines for Design and Construction of Health Care Facilities."

(B) The nurse call system does not primarily use overhead paging; rather a different type of paging system is used. The paging system could include pagers, cell phones, Personal Digital Assistant devices, hand-held radio, etc. If radio frequency systems are used, consideration should be given to electromagnetic compatibility between internal and external sources.

(C) The nurse call system shall be designed so that a call activated by a resident will initiate a signal distinct from the regular staff call system and that can be turned off only at the resident's location.

(D) The signal shall activate an annunciator panel or screen at the staff work area or other appropriate location, and either a visual signal in the corridor at the resident's door or other appropriate location, or staff pager indicating the calling resident's name and/or room location, and at other areas as defined by the functional program.

(E) The nurse call system must be capable of tracking and reporting response times, such as the length of time from the initiation of the call to the time a nurse enters the room and answers the call.

[~~(ii) A facility must purchase and implement the nurse call system on or after July 1, 2006, and no later than June 8, 2009.~~

~~(iii) A facility, with its application, must submit a detailed description of the functionality of the nurse call system, attesting to its meeting all of the above criteria.~~

~~(iv) A facility, with its application, must submit detailed supporting documentation of its nurse call system costs, installation and training costs.~~

~~(v) A facility, with its application, must submit proof of purchase that includes receipts and invoices.~~

~~(b)~~](ii) Incentive for facilities to purchase new patient lift systems capable of lifting patients weighing up to 400 pounds each. Qualifying Medicaid providers may receive up to $45 for each Medicaid certified bed per patient lift, with a maximum of $90 for each Medicaid certified bed.[~~- The Medicaid certified bed count used for each facility for this incentive is the count in the facility as of July 1, 2008.~~

~~(i) To qualify, a facility must, at a minimum, purchase one new normal duty patient lift capable of lifting patients weighing up to 450 pounds and one new heavy duty patient lift capable of lifting patients weighing up to 1,000 pounds; or, two new heavy duty patient lifts capable of lifting patients weighing up to 1,000 pounds.~~

~~(ii) A facility, with its application, must submit a detailed description of the lifts purchased.~~

~~(iii) The patient lifts must be purchased and installed on or after July 1, 2007, and no later than June 8, 2009.~~

~~(iv) A facility, with its application, must submit proof of purchase that includes receipts and invoices.~~]

[~~(c)~~](iii) Incentive for facilities to purchase new patient bathing systems. Qualifying Medicaid providers may receive up to $110 for each Medicaid certified bed.[~~- The Medicaid certified bed count used for each facility for this incentive is the count in the facility as of July 1, 2008.~~]

[~~(i)~~](A) To quality, a facility must, at a minimum, purchase one new side-entry bathing system that allows the resident to enter the bathing system without having to step over or be lifted into the bathing area.

(iv) Incentive for facilities to purchase or enhance patient life enhancing devices. Qualifying Medicaid providers may receive up to $495 for each Medicaid certified bed. Patient life enhancing devices must be one or more of the following:

(A) Telecommunication enhancements primarily for patient use. This may include land lines, wireless telephones, voice mail and push to talk devices. Overhead paging, if any, must be reduced.

(B) Wander management systems and patient security enhancement devices.

(C) Computers and game consoles for patient use.

(D) Garden enhancements.

(E) Furniture enhancements for patients.

(v) Incentive for facilities to educate staff on quality. Qualifying Medicaid providers may receive up to $110 for each Medicaid certified bed. The education or training must:

(A) Be by an industry recognized organization, and

(B) Have a patient centered perspective focused on improving quality of life or care for patients.

(vi) Incentive for facilities to purchase or make improvements to vans and van equipment for patient use. Qualifying Medicaid providers may receive up to $320 for each Medicaid certified bed.

(vii) Incentive for facilities to:

(A) Purchase or lease new or enhance existing clinical information systems software, which incorporates advanced technology into improved patient care including better integration, capture of more information at the point of care, more automated reminders etc. Qualifying Medicaid providers may receive up to $109 for each Medicaid certified bed. The following clinical tracking minimum requirements must all be included in the software:

(I) Care plans;

(II) Current conditions;

(III) Medical orders;

(IV) Activities of daily living;

(V) Medication administration records;

(VI) Timing of medications;

(VII) Medical notes; and

(VIII) Point of care data tracking.

(B) Purchase or lease new or enhance existing clinical information systems hardware. Qualifying Medicaid providers may receive up to $90 for each Medicaid certified bed. The hardware must facilitate the tracking of patient care and integrate the collection of data into clinical information systems software that meets all the tracking criteria in Subsection R414-504-4(4)(vii)(A).

(viii) Incentive for facilities to purchase a new or enhance its existing heating, ventilating, and air conditioning system (HVAC). Qualifying Medicaid providers may receive up to $162 for each Medicaid certified bed.

(ix) Incentive for facilities to use innovative means to improve the residents' dining experience. These changes may include meal ordering, dining times or hours, atmosphere, more food choices etc. Qualifying Medicaid providers may receive up to $111 for each Medicaid certified bed.

(A) A facility, with its application, must submit a detailed description of the changes along with supporting documentation and proof of costs incurred.

(B) Costs under this initiative are limited to incremental costs resulting from the dining program changes.[

~~(ii) A facility, with its application, must submit a detailed description of the bathing system purchased.~~

~~(iii) The bathing system must be purchased and installed on or after July 1, 2007, and no later than June 8, 2009.~~

~~(iv) A facility, with its application, must submit proof of purchase that includes receipts and invoices.~~

~~(d) A facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.~~

~~(e) A facility may not receive more than its documented costs under these incentive programs.~~]

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Utah Code 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MRs based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to R414-504-3.

(2) The incentive period is from July 1, [~~2008~~]2009, through [~~June 30, 2009~~]May 31, 2010.

(3)(a) The Department shall set aside $200,000 annually from the base rate budget for incentives to facilities. In order for a facility to qualify for an incentive:

(i) The[~~- Department must receive the~~] application form and all supporting documentation for [~~that~~]this incentive must be faxed in or mailed with a postmark during[~~no later than June 8 in~~] the incentive

period. Failure to include all required supporting documentation precludes a facility from qualification.[~~Please note that a postmark is not sufficient, all documentation must be physically received by the June 8 deadline.~~]

(ii) Facilities choosing to mail in applications and supporting documentation are in addition responsible to ensure that documents are mailed to the correct address, as follows:

Via United States Postal Service
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service or Federal Express
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(iii) The facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

(b) In order to qualify for an incentive, a facility must have:

(i) a meaningful quality improvement plan which includes the involvement of residents and family;

(ii) a demonstrated means to measure that plan;

(iii) customer satisfaction surveys conducted by an independent third-party in each quarter of the incentive period;

(iv) an employee satisfaction program; and

([~~iv~~]v) no violations, as determined by the Department, that are at an "immediate jeopardy" level at the most recent re-certification survey and during the incentive period.

(c) The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities.

(d) If a facility seeks administrative review of a survey violation, the incentive payment will be withheld pending the final administrative determination. If violations are found not to have occurred at a severity level of "immediate jeopardy" or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the Department shall distribute the remaining incentive payments to all qualifying facilities.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~October 22, 2008~~]2009
Notice of Continuation: December 12, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-35a

♦ ♦

Health, Health Systems Improvement, Emergency Medical Services
R426-6
Emergency Medical Services Competitive Grants Program Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32618
FILED: 04/30/2009, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature made changes in the EMS Systems Act through H.B. 447, that entail that the Competitive Grants Program Rules be changed. The changes in the proposed rule are as a result of this law change, and there are some housekeeping changes. (DAR NOTE: H.B. 447 (2009) is found at Chapter 82, Laws of Utah 2009, and will be effective 07/01/2009.)

SUMMARY OF THE RULE OR CHANGE: The Legislature defined "rural area" and "rural county area" and deleted funding to any other agencies. The definitions the Legislature used have been put in the rule. The rule also clarifies which agencies are eligible. The definitions for County EMS Council or Committee and Multi-county EMS Council or committee were changed to avoid mandating their representation, because that should be decided by those councils, not designated by the state. The Grants Subcommittee proposed that local councils not prioritize local grants, but make recommendations only as to funding. The word "problems" was changed to "issues".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-207

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes impose no additional duties on state government and do not relieve state government from any responsibilities. However, the Legislature took $250,000 out of the State EMS General Funds and told the Bureau that funding for "urban" areas for competitive grants would not be allowed.

❖ LOCAL GOVERNMENTS: There will be a cost to all urban areas and any county that is Class one, two or three. These counties will lose $250,000 through the competitive grants program because of reduced funding. The impact on some of the "urban" agencies will be quite major, especially Utah County, which has had an average competitive grant funding for the past five years of over $105,000. However, agencies with less than 10,000 people and counties that are Class four, five and six, could see approximately eight times as much competitive money.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Dixie Ambulance is the only for-profit entity that will see a loss of money from the competitive grants program. The average competitive grant funding Dixie Ambulance has received over the past five years is over $15,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the competitive grants are monies provided to EMS providers through the Criminal Fines and Forfeitures. The rule imposes no additional application requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes are necessary to stay within appropriations provided by the Legislature. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY UT 84106, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Leslie Johnson at the above address, by phone at 801-273-6636, by FAX at 801-273-0744, or by Internet E-mail at lesliejjohnson@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-6. Emergency Medical Services Competitive Grants Program Rules.
R426-6-2. Definitions.

(1) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS.[~~—It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.~~]

(2) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS.[~~—It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.~~]

(3) "Rural area" means an exclusive geographic service area as provided under Section 26-8a-402, that is a city, town, or other similar community with a population of 10,000 or less based on the most recently published data of the United States Census Bureau.

(4) "Rural county area" means an exclusive geographic service area as provided under Section 26-8a-402, that is a county of the fourth, fifth, or sixth class as provided under Section 17-50-501.

R426-6-3. Eligibility.

(1) Competitive grants are available for use specifically related to the provision of emergency medical services.

(2) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

(3) [~~Only the following entities are eligible for competitive grant funds:~~]If an entity is considered a rural area or a rural county area, and fits the following criteria, they are eligible for competitive grant funds:

(a) licensed EMS agencies;

(b) designated EMS agencies;[~~ and~~]

(c) political subdivisions of Utah state or local governments that are seeking grants to provide for initial training to become licensed or designated EMS agencies; and

(d) non-profit entities that are seeking grants to provide for initial training to become licensed or designated EMS agencies.

(4) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

R426-6-5. Competitive Grant Process.

(1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.

(2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.

(3) It is the intent of the EMS Committee that there be local EMS council or committee review [~~and prioritization~~]of EMS grant applications. Therefore, copies of grant applications [~~shall~~]should be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized,[~~ for a period of at least 30 days~~] for review and [~~prioritization before consideration by~~]recommendation to the State Grants subcommittee.[~~ State reviews may not be conducted for grant proposals which have not been first submitted to the county or the multi-county EMS councils or committees.~~]

(4) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.

(5) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

(6) Grant recipients shall provide matching funds in the amount specified in the Grant Program Guidelines.

(7) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS [~~problems~~]issues.

(8) The Grants Subcommittee shall make recommendations based upon the following criteria:

(a) the impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county [~~prioritization~~]recommendation;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.[

~~(9) Applications requesting grant award extensions past June 30, must be made to the department by May 30 of the grant year. Requests made after that time will not be accepted. Grants extensions may only be given for unforeseen circumstances.~~

~~(10) The Department may withhold payment of grant funds to a grantee that is six months or more in arrears in payments owed to the Department until the overdue payments are paid in full.~~]

R426-6-6. Interim or Emergency Grant Awards.

(1) The Grants [~~Review~~]Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants [~~Review~~]Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants [~~Review~~]Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants [~~Review~~]Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~February 7, 2008~~]2009
Notice of Continuation: October 31, 2007
Authorizing, and Implemented or Interpreted Law: 26-8a

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Health, Health Systems Improvement, Emergency Medical Services

R426-8

Emergency Medical Services Per Capita Grants Program Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32615
FILED: 04/30/2009, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature made changes in the EMS Systems Act through H.B. 447, that entail that the Per Capita Grants Program Rules be changed. The changes in the proposed rule are as a result of this law change, and there are some housekeeping changes. (DAR NOTE: H.B. 447 (2009) is found at Chapter 82, Laws of Utah 2009, and will be effective 07/01/2009.)

SUMMARY OF THE RULE OR CHANGE: The Legislature defined "rural area" and "rural county area" and deleted funding to any other agencies. The definitions the Legislature used have been put in the rule. The rule also clarifies which agencies are eligible. The award formula was changed to comply with Legislative intent.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-207

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes impose no additional duties on state government and do not relieve state government from any responsibilities. However, the Legislature took $250,000 out of the State EMS General Funds and told the Bureau that funding for "urban" areas for per capita grants would not be allowed.

❖ LOCAL GOVERNMENTS: There will be a cost to all urban areas and any county that is Class one, two or three. These counties will lose $250,000 through the per capita grants program because of the reduced funding. The impact on some of the "urban" agencies will be quite major, especially Salt Lake County agencies, which have had an average per capita funding for the past five years of over $316,000. However, agencies with less than 10,000 people and counties that are Class four, five, and six, could see approximately eight times as much per capita money.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Dixie Ambulance Service is the only for-profit entity that will see a loss of money from the per capita grants program. The average per capita grant funding Dixie Ambulance has received for the past five years is over $8,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the per capita grants are monies provided to EMS providers through the Criminal Fines and Forfeitures. The rule imposes no additional application requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes are necessary to stay within appropriations provided by the Legislature. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY UT 84106, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Leslie Johnson at the above address, by phone at 801-273-6636, by FAX at 801-273-0744, or by Internet E-mail at lesliejjohnson@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-8. Emergency Medical Services Per Capita Grants Program Rules.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26 chapter 8a.

(2) The purpose of this rule provides guidelines for the equitable distribution of per capita grant funds specified under the Emergency Medical Services (EMS) Grants Program.

R426-8-2. Definitions.

(1) "Rural area" means an exclusive geographic service area as provided under Section 26-8a-402, that is a city, town, or other similar community with a population of 10,000 or less based on the most recently published data of the United States Census Bureau.

(2) "Rural county area" means an exclusive geographic service area as provided under the Section 26-8a-402, that is a county of the fourth, fifth, or sixth class as provided under Section 17-50-501.

R426-8-[2]3. Eligibility.

(1) Per capita grants are available only to licensed EMS ambulance services,[and]paramedic services, [and]EMS designated first response units and EMS dispatch providers that are within rural areas or rural county areas and are either:

(a) agencies or political subdivisions of local or state government or incorporated non-profit entities; or

(b) for-profit EMS[emergency medical service] providers that are the primary [emergency medical service]EMS provider for a service area.

(2)(a) A for-profit [emergency medical service]EMS provider is a primary [emergency medical service]EMS provider in a geographical service area if it is licensed for and provides service at a higher level than the public or non-profit provider;

(b) The levels of [emergency medical service]EMS providers are in this rank order:

(A) Paramedic rescue;

(B) Paramedic ambulance;

(C) EMT-Intermediate;

(D) EMT-IV; and

(E) EMT-Basic.

(c) Paramedic interfacility transfer ambulance, EMT-Interfacility ambulance transport, or paramedic tactical rescue units are not eligible for per capita funding because they cannot be the primary [emergency medical services]EMS provider for a geographical service area.

(3) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.[If a potential grantee owes the Department money, and the grantee's account is more than six months old, the Department may withhold payment of grant funds until such account is paid in full.]

(4) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

R426-8-[3]4. Grant Implementation.

(1) Per Capita grants are available for use specifically related to the provision of [emergency medical services]EMS.

(2) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(3) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(4) No matching funds are required for per capita grants.

(5) Per capita funds may be used as matching funds for competitive grants.

R426-8-[4]5. Application and Award Formula.

(1) Grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.

(2) Agency applicants shall certify agency personnel rosters as part of the grant application process.

(a) A certified individual who works for both a public and a for-profit agency may be credited only to the public or non-profit licensee or designee.

(b) Certified individuals may be credited for only one agency. However, if a dispatcher is also an EMT, EMT-I, EMT-IA, or paramedic, the dispatcher may be credited to one agency as a dispatcher and one agency as an EMT, EMT-I, EMT-IA, or paramedic.

(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.[

(d) The Department shall determine the amounts of the per capita grants by prorating available funds on a per capita basis by county.]

(3) The Department shall allocate funds [to licensed and designated ambulance and paramedic providers, designated dispatch agencies and designated first response units]by using the following point totals for [their]agency-certified personnel: certified Dispatchers = 1; certified Basic EMTs[and EMT-IVs] = 2; certified Intermediate EMTs and Intermedicate-Advanced EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated EMS dispatch agency and designated EMS first response unit as of [January]March 1 immediately prior to the grant year, which begins July 1. To comply with Legislative intent, the point totals of each eligible agency will be multiplied by the current county classification as provided under Section 17-50-501.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [January 13], 2009
Notice of Continuation: January 24, 2006
Authorizing, and Implemented or Interpreted Law: 26-8a

Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32634
FILED: 04/30/2009, 17:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary or obsolete definitions are removed, new definitions are added, the definitions of reassignment and transfer are redefined for greater clarity. Other changes remove incorrect terms or unnecessary words from definitions. One reference is corrected.

SUMMARY OF THE RULE OR CHANGE: Obsolete or unnecessary definitions in Subsections R477-1-1(23), (33), (38), (64), (103), (105), and (111) are removed. New definitions: Subsection R477-1-1(50) "highly sensitive position", Subsection R477-1-1(86) "proficiency", and Subsection R477-1-1(104) "unlawful discrimination" are added. The new Subsections R477-1-1(93) and (102) redefine reassignment and transfer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
- LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
- SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
J.J. Acker or Michael Tribe at the above address, by phone at 801-537-9096 or 801-538-3627, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or miketribe@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 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/02/2009 at 9:00 AM, State Capitol, Room 250.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned salary rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: A DHRM approved change of a position from one job to another job or a salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(7) Administrative Salary Decrease: A decrease in the current actual wage of one or more salary steps based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) Administrative Salary Increase: An increase in the current actual wage of one or more salary steps based on special circumstances determined by an agency head or commissioner.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to DHRM rules.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(14) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(15) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(16) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(17) Career Mobility: A time limited assignment of an employee to a different position [~~of equal or higher salary range~~]for purposes of professional growth or fulfillment of specific organizational needs.

(18) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(19) Career Service Exempt Employee: An employee appointed to work for an unspecified period of time or who serves at the pleasure of the appointing authority and may be separated from state employment at any time without just cause.

(20) Career Service Exempt Position: A position in state service exempted by law from provisions of [~~competitive~~]career service under Sections 67-19-15 and R477-2-1.

(21) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.

(22) Category of Work: A job series within an agency that is designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced [~~after review by DHRM~~]as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, for example:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, for example:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

[~~(23) Certifying: The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.~~

~~——~~](2[~~4~~]3) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(2[~~5~~]4) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(2[~~6~~]5) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(2[~~7~~]6) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(2[~~8~~]7) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(2[~~9~~]8) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

([~~30~~]29) Corrective Action: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

([~~31~~]30) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

([~~32~~]31) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

[~~(33) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.~~

~~——~~](3[~~4~~]2) DHRM: The Department of Human Resource Management.

(3[~~5~~]3) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(3[~~6~~]4) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 ([~~1994~~]2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 ([~~1993~~]2008); including exclusions and modifications.

(3[~~7~~]5) Disciplinary Action: Action taken by management under Rule R477-11.

[~~(38) Discrimination: Unlawful action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.~~

~~——~~](3[~~9~~]6) Dismissal: A separation from state employment for cause under Section R477-11-2.

([~~40~~]37) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85 (1993), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

([~~41~~]38) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

([~~42~~]39) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

([~~43~~]40) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

([~~44~~]41) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

([~~45~~]42) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

([~~46~~]43) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

([~~47~~]44) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

([~~48~~]45) FLSA Nonexempt: Employees who are not exempt from the Fair Labor Standards Act.

([~~49~~]46) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

([~~50~~]47) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

([~~51~~]48) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

([~~52~~]49) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

([~~53~~]50) Highly Sensitive Position: A position approved by DHRM that includes the performance of functions:

(a) requiring an employee to operate motorized machinery;

(b) directly related to law enforcement;

(c) involving direct access or having control over direct access to controlled substances;

(d) directly impacting the safety or welfare of the general public;

(e) requiring an employee to carry or have access to firearms; or

(f) permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits;

(vi) household composition; or

(vii) driver license

(51) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

([~~54~~]52) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

([~~55~~]53) HRE: Human Resource Enterprise; the state human resource management information system.

([~~56~~]54) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

([~~57~~]55) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

([~~58~~]56) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([~~59~~]57) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

([~~60~~]58) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

([~~61~~]59) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range and test standards are applied to each position in the group.

([~~62~~]60) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

([~~63~~]61) Job Identification Number: A unique number assigned to a job by DHRM.

[~~(64) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.~~

]([~~65~~]62) Job Requirements: Skill requirements defined at the job level.

([~~66~~]63) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

([~~67~~]64) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

([~~68~~]65) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

([~~69~~]66) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

([~~70~~]67) Market Comparability Adjustment: Legislatively approved change to a salary range for a job [~~or to an employee's actual wage~~]based on a compensation survey conducted by DHRM.

([~~71~~]68) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

([~~72~~]69) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

([~~73~~]70) Nonfeasance: Failure to perform either an official duty or legal requirement.

([~~74~~]71) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

([~~75~~]72) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

([~~76~~]73) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

([~~77~~]74) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

([~~78~~]75) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in [~~Title 63, Chapter 46b,~~]Section 63G-4-2 for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

([~~79~~]76) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

([~~80~~]77) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

([~~81~~]78) Position Identification Number: A unique number assigned to a position for FTE management.

([~~82~~]79) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

([~~83~~]80) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

([~~84~~]81) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty:

(a) where a fatality occurs;

(b) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident;

(c) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves one or more motor vehicles that incur disabling damage as a result of the accident that must be transported away from the scene by a tow truck or other vehicle;

(d) where there is reasonable suspicion that the employee had been driving while under the influence of a controlled substance.

([~~85~~]82) Preemployment Drug Test: A drug test conducted on final candidates for a highly sensitive position or on a current employee prior to assuming highly sensitive duties.

([~~86~~]83) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

([~~87~~]84) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

([~~88~~]85) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from actual and budgeted FTE reductions.

(86) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

([~~89~~]87) Promotion: An action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

([~~90~~]88) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

([~~91~~]89) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

([~~92~~]90) Reappointment: Return to work of an individual from the reappointment register, whose accrued annual leave, converted sick leave, compensatory time and excess hours in the employee's former position were cashed out upon separation.

([~~93~~]91) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause;

(c) by Career Service Review Board decision been placed on the reappointment register.

([~~94~~]92) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

([~~95~~]93) Reassignment: An action mandated by management moving[~~A management initiated action moving~~]an employee from [~~his current~~]one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons[~~, not included in the definition of promotion or demotion~~]. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

([~~96~~]94) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

([~~97~~]95) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

([~~98~~]96) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at separation.

([~~99~~]97) Rehire: Return to work of a former career service employee who resigned from state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at separation.

([~~100~~]98) Requisition: An electronic document used for Utah Job Match recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

([~~101~~]99) Salary Range: The segment of an approved pay plan assigned to a job.

([~~102~~]100) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

[~~(103) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:~~

~~(a) inpatient care in a hospital, hospice, or residential medical care facility; or~~

~~(b) outpatient care with continuing treatment by a health care provider.~~

~~]~~([~~104~~]101) Tangible Employment Action: Any significant change in employment status e.g. hiring, firing, promotion, failure to promote, demotion, undesirable assignment, a decision causing a significant change in benefits, compensation decisions, and work assignment. Tangible employment action does not include insignificant changes in employment status such as a change in job title without a change in salary, benefits or duties.

[~~(105) Temporary employee: A career service exempt employee on schedule AI, AJ, or AL.~~

~~——~~]([~~106~~]102) Transfer: An action not mandated by management moving an employee [~~An employee initiated movement~~]from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies[~~ for reasons not included in the definition of promotion~~]. A transfer may include a decrease in actual wage.

([~~107~~]103) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(104) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

([~~108~~]105) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.[~~ Employees covered under USERRA are in a leave without pay status from their state position.~~]

([~~109~~]106) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

([~~110~~]107) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.[

~~(111) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.~~]

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6

♦ ♦

Human Resource Management, Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32605
FILED: 04/30/2009, 15:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments correct and clarify to whom the Department of Human Resource Management (DHRM) rules apply. Erroneous and unnecessary language is removed. Some terms are replaced with more proper terms. Processes for grieving discrimination are clarified. Administration of records is made compliant with Government Records Access and Management Act (GRAMA). Language is added to comply with code. Nonsubstantive changes correct references to rules and code.

SUMMARY OF THE RULE OR CHANGE: Section R477-2-1 is amended to correct and detail to whom rules apply. In Section R477-2-2, language permitting other agencies to correct DHRM rules is removed. Additions in Section R477-2-2 clarify that DHRM's executive director may only make exceptions where permitted by code. Subsection R477-2-3(3), directs employees more clearly on grieving unlawful discrimination. Section R477-2-5 is rewritten. Subsection R477-2-5(8) is added to address breach of confidentiality of records. Subsection R477-2-9(2) is amended to comply with Subsection 63G-7-902(2).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 52-3-1, 63G-2-3, 63G-5-2, 63G-7-9, 67-19-6, and 67-19-18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Michael Tribe or J.J. Acker at the above address, by phone at 801-538-3627 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at miketribe@utah.gov or jacker@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to [~~all~~]the executive branch of Utah State Government and its career and career service exempt [~~state~~]employees[~~ except those specifically exempted in Section 67-19-12~~]. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

(1) members of the Legislature and legislative employees;

(2) members of the judiciary and judicial employees;

(3) officers, faculty, and other employees of state institutions of higher education;

(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Office of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch;

(7) employees of quasi-governmental agencies and special service districts;

(8) employees in any position that is determined by statute to be exempt from these rules.

[~~(1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in Rule R477-3 and R477-6.~~

~~(2) Nonstate agencies with employees protected by the career service provisions in Rules R477-4, R477-5, R477-9 and R477-11 are exempted by contract from any provisions deemed inappropriate in their jurisdictions by the Executive Director, DHRM.~~

~~(3) Unless employees in exempt positions have written contracts of employment for a definite period of time, they are career service exempt employees. The following employees are exempt from mandatory compliance with these rules:~~

~~(a) members of the Legislature and legislative employees;~~

~~(b) members of the judiciary and judicial employees;~~

~~(c) elected members of the executive branch and their direct staff who are career service exempt employees;~~

~~(d) officers, faculty, and other employees of state institutions of higher education;~~

~~(e) any positions for which the salary is set by law;~~

~~(f) employees in the Office of the Attorney General;~~

~~(g) agency heads and other persons appointed by the governor when authorized by statute;~~

~~(h) employees of the Governor's Office of Economic Development whose positions have been designated executive/professional by the executive director of the Governor's Office of Economic Development with the concurrence of the Executive Director, DHRM;~~

~~(i) employees of the Medical Education Council.~~

~~(4) All other exempt positions are covered by these rules except rules governing career service status in Rule R477-4, R477-5, R477-9 and R477-11.~~

~~(5) The above positions may or may not be exempt from federal and other state regulations.~~]

R477-2-2. Compliance Responsibility.

Agencies shall comply with these rules.[~~ Agencies are authorized to correct any administrative errors.~~]

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when one or more of the following criteria are satisfied:

(a) Applying the rule prevents the achievement of legitimate government objectives;

(b) Applying the rule impinges on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

(3) In cases of noncompliance with Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties under Subsection 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-3. Fair Employment Practice.

All state personnel actions must provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, [~~sex~~]gender, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor.

(3) An employee who alleges [~~illegal~~]unlawful discrimination may:[~~ submit a claim to the agency head.~~]

(a) submit a grievance to the agency head; and

(b) [~~The employee may~~]file a charge with the Utah Anti-Discrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

([~~b~~]4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

R477-2-5. Records.

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access

and Management Act (GRAMA) and/or applicable federal laws. DHRM will designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record [~~computerized file~~]for each employee that contains the following, as appropriate:

(a) performance ratings;

(b) records of actions affecting employee salary, current classification, title and salary range, salary history, status and other personal data[~~, status or standing~~].

(2) DHRM[~~Agencies~~] shall maintain, on behalf of agencies,[~~the following types of records in employee personnel files~~] personnel files containing electronic or hard copy records of the following:

(a) employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, [~~new employee orientation form,~~]performance evaluation records, separation and leave without pay notices[~~records~~], including [~~employee benefits notification~~]forms for PEHP and URS such as employee benefits notification forms and military leave worksheets;

(b) copies of professional licensure, training certification and academic transcripts, when required by the job;[~~references to or copies of transcripts of academic, professional, or training certification or preparation;~~]

(c) other documents required by agency management; and[~~copies of items recorded in the DHRM computerized file and other materials required by agency management to be placed in the personnel file. The agency personnel file shall be considered a supplement to the DHRM computerized file and shall be subject to the rules governing personnel files;~~]

(d) year end leave summary records.[~~leave and time records; and~~

~~(e) copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.~~]

(3) DHRM[~~Agencies~~] shall maintain, on behalf of agencies, a separate[~~file containing~~] confidential file for each of the following:[~~employee medical information.~~]

(a) Medical File:[~~This file shall include~~] all information pertaining to medical issues, including Family Medical and Leave Act [~~forms~~]records, medical and dental enrollment forms which contain health related information, health statements, workers compensation records, long-term disability documentation, and applications for additional life insurance[~~, and any other medical information~~].

(i) Information in this file shall be private, controlled, or exempt information in accordance with Title 63G-2.

(b) ADA file: records pertaining to requests for reasonable accommodation, associated medical information, and the interactive process required by the ADA.

(i) information in this file is exempt from the provisions of Title 63G-2.

([~~b~~]c) Fitness for Duty and Drug and Alcohol Testing File: i[~~I~~]nformation regarding the results from fitness for duty evaluations and drug testing[~~shall be maintained in a file separate from the personnel file and from the file containing confidential employee medical information~~].

(i) Information in this file shall be private or controlled in accordance with Title 63G-2.[~~information. Communication shall adhere to Title 63, Chapter 2, the Government Records Access and Management Act~~].

[~~(d) An employee who violates confidentiality is subject to state disciplinary procedures.~~

] ([~~4~~]d) I-9 File: [~~Agencies shall maintain a separate file containing~~]Form I-9 and other documents required by the United States Bureau of Citizenship and Immigration Services regulations, under Immigration Reform and Control Act of 1986, 8 USC Section 1324a.

([~~5~~]4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.[~~or the agency, as governed by law and under agency policy.~~]

(a) An employee may request corrections, amendments to, [~~correct, amend,~~] or challenge any information in the DHRM [~~computerized~~]electronic or hard copy[~~agency~~] personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

([~~6~~]5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed [~~section~~]Title and the authority for the action.

([~~7~~]6) Upon employee separation, DHRM [~~and agencies~~]shall retain [~~computerized~~]electronic records for thirty years. Agency hard copy records shall be retained at[~~by~~] the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

[~~(8) Information classified as private in both DHRM and agency personnel and payroll files shall be available only to the following people:~~

~~(a) the employee;~~

~~(b) users authorized by the Executive Director, DHRM, who have a legitimate need to know;~~

~~(c) individuals who have the employee's notarized written consent.~~

~~(9) Utah is an open records state, according to Title 63, Chapter 2, the Government Records Access and Management Act. Information classified as public concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be released upon request.~~

] ([~~10~~]7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel, [~~and~~]medical, and I-9 files to the new agency. The files shall contain [~~a~~]records [~~of all actions that have affected the employee's status and standing~~]according to Subsections R477-2-5(2) or R477-2-5(3).

[~~(11) An employee may request a copy of documentary evidence used for disciplinary purposes in any formal hearing, regardless of the document's source, prior to such use. An employee may not request documentary evidence used for rebuttal.~~

~~(12) Employee medical information documented in separate confidential files shall be private or controlled information. Communication must adhere to Title 63, Chapter 2, the Government Records Access and Management Act. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.~~

~~(13) In compliance with the Government Records Access and Management Act, only information classified as public or private which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The authorized manager in DHRM shall make the determination.~~

~~(14) An employee may verbally request the release of information for personal use, or authorize in writing the release of personal performance records for use by an outside agent based on a need to know authorization. Private data shall only be released, except to the employee, after a notarized written request has been evaluated and approved.~~](8) Employees who violate confidentiuality are subject to disciplinary action and may be personally liable.

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to [~~his~~]state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under [~~Sections 63-30-36, and 63-30-37~~]Title 63G, Chapter 7, the Governmental Immunity Act[~~ (GIA)~~], an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim,[~~If a law suit results against an employee, the GIA stipulates that~~]the employee [~~must~~]shall make a written request for a defense [~~from his~~]to the agency head [~~in writing~~]within ten calendar days, in accordance with Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program [~~in accordance with~~]under Chapter 63G, Chapter 5[~~, 46C, Utah Code Annotated~~].

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
Date of Enactment or Last Substantive Amendment: July 1, 200[~~8~~]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 52-3-1; [~~63-2-204(5)~~]63G-2-3; 63G-5-2, 63G-7-9; [~~63-2-903(4);~~]67-19-6; 67-19-18

♦ ♦

Human Resource Management, Administration
R477-3
Classification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32598
FILED: 04/30/2009, 13:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language is moved from one section to another for consistency, job classification applicability is articulated in more detail, unnecessary language is removed, the potential need for classification review is articulated, and some terminolgy is replaced with clearer terminology.

SUMMARY OF THE RULE OR CHANGE: Section R477-3-1 is retitled and rewritten with more detail. In Section R477-3-2, the requirement for "all" jobs to have descriptions is removed. Subsection R477-3-3(2) is added. Section R477-3-6 is added with language from former Section R477-3-1.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-12

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:

J.J. Acker or Michael Tribe at the above address, by phone at 801-537-9096 or 801-538-3627, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or miketribe@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-3. Classification.
R477-3-1. Job Classification [~~Methods~~]Applicability.

[~~The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to the following rule, consistent with Subsection R477-2-2(1).~~](1) The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions except for those exempted in 67-19-12 (2), which include:

(a) employees already exempted from DHRM rules in R477-2-1;

(b) employees in a personal and confidential relationship to an elected official as defined in Subsection 67-19-15(1)(k);

(c) employees of the State Board of Education, who are licensed by the State Board of Education;

(d) employees in any position that is determined by statute to be exempt from classified service;

(e) department heads listed in 67-19-22 and other persons appointed by the governor pursuant to statute;

(f) employees of the Department of Community and Culture whose positions are designated as executive/professional positions by the executive director of the Department of Community and Culture with the concurrence of the executive director of DHRM;

(g) employees of the Governor's Office of Economic Development whose positions are designated as executive/professional positions by the director of the office;

(h) employees of the Medical Education Council; and

(i) educators as defined by Section 53A-25b-102 who are employed by the Utah Schools for the Deaf and the Blind.

(2) The Executive Director, DHRM, may designate specific job titles, job and position identification numbers, schedule codes, and other administrative information for all employees exempted in R477-2-1 and R477-3-1 for identification and reporting purposes only. These employees are not to be considered classified employees.

R477-3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate[~~, for all jobs in the classified plan~~].

(1) Job descriptions shall contain:

(a) job title;

(b) distinguishing characteristics;

(c) a description of tasks commonly associated with most positions in the job;

(d) statements of required knowledge, skills, and other requirements;

(e) FLSA status and other administrative information as approved by DHRM.

R477-3-3. Assignment of Duties.

(1) Management may assign, modify, or remove any [~~employee~~]position task or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by agency management.

(2) Significant changes in the assigned duties may require a position classification review as described in R477-3-4.

R477-3-4. Position Classification Review.

(1) A formal classification review may be conducted under the following circumstances:

(a) as part of a [~~scheduled~~]classification study;

(b) at the request of an agency, with the approval of the Executive Director, DHRM or designee; or

(c) as part of a classification grievance review

(2) DHRM shall determine if there have been sufficient significant changes in the duties of a position to warrant a formal review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-3-6. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, grievances, job descriptions, position classifications
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12

Human Resource Management, Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32630
FILED: 04/30/2009, 17:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary and redundant language is removed; more detailed information is included to foster greater assistance and clarity in the recruitment process; some terminology is updated; some sections are rewritten to remove outdated material, simplify and reduce unnecessary text; reassignment and transfer are clarified; and obsolete sections are removed.

SUMMARY OF THE RULE OR CHANGE: Section R477-4-1 is retitled to reflect a rewrite that removes unnecessary language. Section R477-4-2 is rewritten and expanded with more detail. Subsection R477-4-5(5) is removed. Section R477-4-6 is rewritten for greater clarity. Subsection R477-4-8(3) is removed as it is unnecessary. In Section R477-4-9, hiring list provisions are reduced and simplified, removing redundant language. Obsolete Section R477-4-10 is removed. Section R477-4-13 is rewritten for clarity. Section R477-4-16 is added for consistency with other rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
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DIRECT QUESTIONS REGARDING THIS RULE TO:
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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-1. Authorized Recruitment System[~~ation to Fill a Position~~].

[~~Agencies shall have sufficient funds to fill positions that are listed in the Position Management Report. The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).~~

~~The DHRM approved recruitment and selection system is the state's recruitment and selection system for career service positions.~~]Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by [~~the Department of Human Resource Management~~]DHRM.

R477-4-2. [~~Selection for~~]Career Service Exempt Positions.

(1) [~~Agencies and managers may use any process to select an employee for a career service exempt position which complies with state and federal laws and regulations.~~]The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Only Schedule A appointments made from a hiring list under Subsection R477-4-9 may be considered for conversion to career service.

(4) Appointments to fill an employee's position who is on approved leave without pay shall only be made temporarily.

(5) Appointments made on a time-limited basis shall:

(a) be Schedule AI, AJ, or AL

(b) have a time limited agreement signed by both the hiring official and the employee.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM [~~standards and procedures~~]business practices;

(b) career service principles;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Order of Selection for Career Service Positions.

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment or transfer within an agency for the purposes of reasonable accommodation under the Americans with Disabilities Act;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment[~~s~~] or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment[~~s~~], [~~management initiated~~]career mobility, or other movement of qualified [~~career service~~]employees [~~at the same or lesser salary range~~]to better utilize skills or assist management in meeting the organization's mission; or

(f) reclassification.

(2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities shall make appointments according to the following order of selection which applies to all vacant career service positions:

(a) First, agencies shall make appointments from the statewide reappointment register [~~in compliance with Subsection R477-12-3(7)~~]with the names of individuals who meet the position qualifications.

(b) Second, agencies may make appointments within an agency through promotion or through transfer of a qualified career service employee, career mobility assignments[~~-to a higher salary range~~], or conversions from schedule A to schedule B as authorized by Subsection R477-5-1[~~.~~](3).

(c) Third, agencies may make appointments from a hiring list of qualified applicants [~~certified as eligible for appointment to~~]for the position, or from another competitive process pre-approved by the Executive Director, DHRM.

R477-4-5. Recruitment for Career Service Positions.

(1) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) In addition to the DHRM required recruitment announcement, all other recruitment announcements shall include the following:

(i) position information about available vacancies;

(ii) information about the DHRM approved recruitment and selection system;

(iii) [~~documented communication regarding examination methods and~~]opening and closing dates[~~, if applicable~~]; and

(iv) a strategy for equal employment opportunity, if applicable.

(2) [~~Job information~~]Recruitments for career service positions shall be [~~announced publicly~~]posted for a minimum of [~~five working~~]seven calendar days.

(3) Agencies are required to provide employees with information about the DHRM approved recruitment and selection system.

(4) Recruitment is not required for personnel actions under Subsection R477-4-4(1).

[~~(5) Appointment of an employee from the statewide reappointment register must comply with the order of selection under Section R477-4-4.~~

]

R477-4-6. Transfer and Reassignment.

(1) Positions may be filled by reassigning an employee without a reduction in the current actual wage except as provided in federal or state law.[~~under Subsection R477-6-4(5).~~]

([~~2~~]a) [~~The agency that receives a~~]Prior to transfer or reassignment of an employee, the receiving agency shall verify [~~his~~]the employee's career service status and that the employee meets the job requirements for the position.

([~~a~~]i) An employee with a disability who is otherwise qualified may be eligible for transfer or reassignment to a vacant position within the agency as a reasonable accommodation measure.

([~~3~~]b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

([~~4~~]c) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

([~~5~~]2) A reassignment or transfer may [~~be to one or more of the following~~]include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit[~~; or~~

~~(d) a different agency~~].

R477-4-7. Rehire.

(1) [~~A former career service employee may be eligible for rehire to any career service position for which he is qualified. Rehire is not a right.~~

~~(a)~~]A [~~rehired~~]former employee [~~must~~]shall compete for career service positions through the DHRM approved recruitment and selection system and [~~must~~]shall serve a new probationary period, as designated in the official job description.

([~~i~~]a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all [~~state~~]eligible employment in which the employee [~~was eligible to~~]accrued leave.

([~~ii~~]b) An employee rehired within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

([~~b~~]c) A rehired employee may be offered any salary within the salary range for the position.[

~~(2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.~~]

R477-4-8. Examinations.

(1) Examinations shall be designed to measure and predict success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.

(2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:

(a) a documented job analysis;

(b) an initial, unbiased screening of the individual's qualifications;

(c) security of examinations and ratings;

(d) timely notification of individuals seeking positions;

(e) elimination from further consideration of individuals who abuse the process;

(f) unbiased evaluation and results;

(g) reasonable accommodation for qualified individuals with disabilities.[

~~(3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience.~~]

R477-4-9. Hiring Lists.

(1) The hiring list shall include the names of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(a) [~~Hiring lists shall be constructed using the DHRM approved recruitment and selection system. All competitive processes shall be based on job related criteria.~~

~~(b) All applicants included on a hiring list shall be examined with the same examination or examinations.~~

~~(c)~~]An individual shall be considered an applicant when the individual applies for [~~he is determined to be both qualified for and interested in~~]a particular position identified through a specific [~~requisition~~]recruitment.

(b) Hiring lists shall be constructed using the DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

[~~(4) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.~~

~~]~~([~~5~~]4) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

([~~6~~]5) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

[~~R477-4-10. Time Limited Exempt Positions.~~

~~The Executive Director, DHRM, may approve the creation and filling of career service exempt positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be career service exempt as defined in Section 67-19-15.~~

~~(1) Time limited, temporary or seasonal career service exempt appointments, such as schedules AJ and AL, may be made without competitive examination, provided job requirements are met.~~

~~(a) The following appointments are temporary, and may not receive benefits:~~

~~(i) AJ appointments shall last no longer than 1560 working hours in any consecutive 12 month period.~~

~~(b) Appointments under schedules AE, AI and AL shall be career service exempt positions. AE, AI and AL employees may receive benefits on a negotiable basis.~~

~~(i) Schedule AL appointments shall work on time limited projects for a maximum of two years or on projects with time limited funding.~~

~~(ii) Only schedule A appointments made from a hiring list under Subsection R477-4-9 may be considered for conversion to career service.~~

~~(2) Appointments to fill an employee's position who is on approved leave without pay shall only be made temporarily.~~

~~(3) A time limited agreement shall be signed by the parties.~~

]

R477-4-1[~~1~~]0. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for [~~career~~]part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-1[~~2~~]1. Internships and Cooperative Education.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to [~~temporary~~]time limited, career service exempt positions.

R477-4-1[~~3~~]2. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may [~~shall~~]not[~~be~~] require[~~d~~] the employee to compete for his current position. However, a reduction in the number of positions in a certain class shall be treated as a reduction in force.

R477-4-1[~~4~~]3. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a time limited assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.[~~to qualified employees. Career mobility programs are designed to develop agency resources and to enhance the employee's career growth.~~

~~(a) Agencies shall establish procedures governing career mobility programs.~~

~~(2) Agencies shall develop and use written career mobility contract agreements between employees and supervisors to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.~~

~~(a) Programs shall conform to equal employment opportunities and practices.~~]

([~~b~~]3) An eligible employee or agency[~~, the agency or supervisor~~] may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(c) Agencies may offer an employee on a career mobility assignment a salary increase or salary decrease of a maximum of 11% or the minimum of the range.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

([~~c~~]5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

([~~d~~]a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

([~~3~~]b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

([~~a~~]6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-16. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6

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Human Resource Management, Administration
R477-5
Employee Status and Probation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32593
FILED: 04/30/2009, 11:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments are made to remove unnecessary language and to update certain terminology for clarity.

SUMMARY OF THE RULE OR CHANGE: In Section R477-5-1, "competitive career service" and the phrase "completed a probationary period" is removed because they are not necessary in the context. In Subsection R477-5-2(1), "full and fair" is removed because they are unclear terms. In Subsection R477-5-2(3), "time" is replaced with "regular work schedule" for clarity. In Subsection R477-5-2(4), "competitive" is removed because it is redundant.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Subsection 67-19-16(5)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
Michael Tribe or J.J. Acker at the above address, by phone at 801-538-3627 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at miketribe@utah.gov or jacker@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

(1) Only an employee who is appointed through a pre-approved competitive process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period[~~, in a competitive career service position~~] prior to receiving career service status.

(3) An exempt employee may only convert to career service status under the following conditions:

(a) The employee previously held career service status with no break in service between exempt status and the previous career service position.

(b) The employee was hired from a hiring list as prescribed by Subsection R477-4-9[~~, and completed a probationary period~~].

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive [~~full and fair~~]an opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career service position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, military leave under USERRA, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.

(3) An employee in a career service position who works at least 50% [~~percent~~]of the [~~time~~]regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a [~~competitive~~]career service position may be transferred, reassigned or promoted to another [~~competitive~~]career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

KEY: employment, personnel management, state employees
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-16(5)(b)

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Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32603
FILED: 04/30/2009, 14:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The role of the Department of Human Resource Management's (DHRM's) executive director is clarified with regard to compensation matters. More detail is added to allocation of pay plans. Requirements for appointments are made more flexible. Language is added to clarify eligibility for merit increases. Language is amended for greater clarity and alignment with other rules. The employee benefits process is explained in more detail. Less appropriate terms are replaced and nonsubstantive changes are made to improve formatting.

SUMMARY OF THE RULE OR CHANGE: Section R477-6-1 is amended to articulate the DHRM executive director's role and the increments of merit steps are stated in this first section. Section R477-6-2 is expanded to include requirements for market comparability, benchmarking, and salary ranges. Subsection R477-6-3(1) changes the requirement for agencies to seek approval for appointments to requiring consultation before making appointments. Subsection R477-6-4(1)(a)(iii) is amended to clarify that the most recent evaluation must have been within the previous 12 months. In Subsection R477-6-4(2), "job" is replaced with "position" where appropriate. In Subsections R477-6-4(5) and R477-6-4(6), transfer and reassignment are more clearly explained. Section R477-6-6 is rewritten for better clarity and detail.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63F-1-106, 67-19-6, 67-19-12, and 67-19-12.5, and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop and adopt[~~or modify~~] pay plans for each position in classified service. Positions exempt from classified service are identified in Subsection R477-3-1(1).[~~compensating employees.~~]

(a) Pay plans shall contain merit steps in increments of 2.75%.[

~~(2) Market comparability salary range adjustments shall be legislatively approved.~~]

R477-6-2. Allocation to the Pay Plans.

(1) Each job in classified service shall be assigned to a salary range on the applicable pay plan[~~, except where compensation is established by statute~~].

(2) Salary ranges can be adjusted through:[~~determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job.~~]

(a) a comparison of the state's benchmark job salary ranges to salary ranges for similar positions in the market through an annual compensation survey conducted by DHRM.

(i) market comparability salary range adjustment recommendations shall be included in the annual compensation plan and shall be submitted to the Governor no later than October 31 of each year.

(ii) market comparability salary range adjustments shall be legislatively approved.

(iii) if market comparability adjustments are approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job; or

(b) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary ranges in the market.

(3) Each job exempted from classified service shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-3. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job. Hiring officials shall [~~receive approval from their agency head and~~]consult with DHRM before making appointment offers to individuals.

(2) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, any cost of living allowances, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

(1) Merit increases. The following conditions apply if merit pay increases are authorized and funded by the legislature:

(a) Employees, classified in position schedule B, shall be eligible for the merit increase if the following conditions are met:

(i) Employee may not be on a longevity step.

(ii) Employee may not be paid at the maximum step of their salary range.

(iii) Employee has received a minimum rating of successful on their most recent performance evaluation, which shall have been within the previous twelve months.

(iv) Employee has been in a paid status by the state for at least six months at the beginning of the new fiscal year.

(b) All other position schedules will be reviewed by DHRM in consultation with the Governor's Office.

(c) Employees designated as schedule AJ are not eligible for merit step increases.

(2) Promotions and Reclassifications.

(a) An employee promoted or reclassified to a [~~job~~]position with a salary range exceeding the employee's current salary range maximum by one salary step shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. An employee who is promoted or reclassified to a [~~job~~]position with a salary range exceeding the employee's current salary range maximum by two or more salary steps shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.

(i) An employee may not be placed higher than the maximum salary step or lower than the minimum salary step in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(3).

(ii) An employee who remains in longevity status after a promotion or reclassification shall retain the same salary by being placed on the corresponding longevity step.

(b) To be eligible for a promotion, an employee shall:

(i) meet the [~~job~~]requirements and skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position.

(c) An employee whose position is reclassified or changed by administrative adjustment to a [~~job~~]position with a lower salary range shall retain the current salary. The employee shall be placed on the corresponding longevity step if the salary exceeds the maximum of the new salary range.

(3) Longevity.

(a) An employee shall receive a longevity increase of 2.75% [~~percent~~]when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(b) An employee on a longevity step shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee on a longevity step shall only be eligible for additional step increases every three years. To be eligible, an employee must receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee on a longevity step who is reclassified to a position with a lower salary range shall retain the current actual wage.

(e) An employee on a longevity step who is promoted or reclassified to a position with a higher salary range shall only receive [~~an~~]a salary increase if the current actual wage is less than the highest salary step of the new range.

(f) Agency heads [~~or~~]are not eligible for the longevity program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, may not receive an adjustment in the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum step of the new range.

(5) Reassignment.

An employee's current actual wage may [~~only~~]not be lowered except when [~~permitted by~~]provided in federal or state law[~~, including but not limited to the Americans with Disabilities Act~~].

(6) Transfer.

Management may [~~increase or~~]decrease the current actual wage of an employee who [~~initiates a~~]transfers to another position[~~consistent with Subsections R477-6-4(9) and (10)~~].

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the reduction in the current actual wage.

(8) Productivity step adjustment.

Agency management may establish policies to reward an employee who assumes additional workloads which result from the elimination of a position for at least one year with an increase of up to four salary steps. An employee at the maximum step of the salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) either the employee or management can make the suggestion;

(ii) the employee and management agree;

(iii) the agency head approves;

(iv) a written program policy achieves increased productivity through labor and management collaboration;

(v) DHRM approves;

(vi) the position will be abolished from the position [~~authorization plan~~]management report for a minimum of one year;

(vii) staff receive additional duties which are substantially above a normal full workload;

(viii) the same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) the total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50%[~~percent~~] of the savings generated by eliminating the position.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive one or more steps up to the maximum of the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head;

(iii) supported by issues such as: special agency conditions or problems or other unique situations or considerations in the agency.

(d) The agency head is the final authority for salary actions authorized within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the maximum step of the range or on a longevity step may not be granted administrative salary increases.

(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) An employee shall receive a one or more step decrease not to exceed the minimum of the salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, or other unique situations or considerations in the agency.

(c) The agency head is the final authority for salary actions within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-6-5. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed $4,000 per occurrence and $8,000 in a fiscal year. In exceptional circumstances, an award may exceed these limits upon application to DHRM and approval by the Governor.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees [~~who~~]that[~~:~~

~~(A)~~]demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) All cash awards [~~must~~]shall be approved by the agency head or designee. They [~~must~~]shall be documented and a copy shall be maintained [~~in~~]by the agency[~~'s individual employee file~~].

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of $50 per occurrence and $200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and must follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus to an employee as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(b) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to convince the candidate to work for the state.

(c) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(d) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(e) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

R477-6-6. Employee Benefits.

(1) An eligible employee may enroll in medical, dental, vision, a flexible spending account, and retirement benefits online or complete a paper enrollment form. Agencies shall submit paper enrollment forms to Group Insurance or Utah Retirement Systems within three working days of the date entered on the enrollment form[~~explain all benefits provided by the state to new hires or rehires within five working days of the hire date.~~

~~(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date~~].

([~~3~~]2) An eligible employee [~~must~~]shall elect to enroll in medical, dental, vision, a flexible spending account[~~the life, health, vision, and dental plans~~] within 60 days of the hire date.[~~to avoid having to provide proof of insurability. An employee who does not enroll within 60 days can only enroll during the annual open enrollment period for all state employees. Agencies shall submit the enrollment forms to Group Insurance within three days of the date entered on the enrollment form.~~]

(a) An employee with previous medical coverage shall provide to the state's health care provider a certificate of creditable coverage which states dates of eligibility in order to have the preexisting waiting period reduced or waived.

(b) An employee who does not enroll within 60 days shall only be permitted to enroll during the annual open enrollment period for all state employees.

(3) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(4) An employee eligible for retirement benefits shall be automatically enrolled in the defined benefit plan and the defined contribution plan, as applicable. An enrollment form shall be required to establish beneficiaries and investment strategies and can be submitted at any time.

[~~(4) An employee in a position which normally requires working less than 40 hours per pay period is ineligible for benefits. An employee in a position which normally requires working 40 hours or more per pay period shall be eligible for all benefits, unless the employee is in a position specifically designated as ineligible for benefits. Leave benefits shall be determined on a prorated basis according to actual hours paid in a pay period.~~

~~]~~(5) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-6-7. Employee Converting from Career Service to Schedule AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AD, AR, or AS shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) a base salary increase of one to three salary steps, as determined by the agency head. An employee at the maximum of the current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75%[~~percent~~], 5.5% [~~percent~~]or 8.25% [~~percent~~]to be determined by the agency head;

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of term life insurance.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, the employee may not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions [~~actions~~]and documents.

KEY: salaries, employee benefit plans, insurance, personnel management
Date of Enactment or Last Substantive Amendment: September 22, 200[~~8~~]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

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Human Resource Management, Administration
R477-7
Leave

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32627
FILED: 04/30/2009, 16:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments: clarify those ineligible for leave benefits; place restrictions on how leave shall or may not be accrued or used; removes language in holiday leave to simplify and add clarity; subsections are rearranged for better formatting; some terms are changed and conditons are restated to clarify intent; unnecessary employee requirements are removed; expired provisions are removed; awkward language is corrected; changes are made to leave without pay provisions; furlough is explained more thoroughly; employees on FMLA are prohibited from working second jobs without written consent to prevent abuse; changes are made to make workers compensation provisions and long term disability compliant with law and consistent within rule while reducing potential for abuse.

SUMMARY OF THE RULE OR CHANGE: Amendments in Section R477-7-1 clarify those ineligible for leave and articulate how leave shall be or may not be accrued or used. Unnecessary and confusing language is removed from Section R477-7-2. Some of this language is addressed elsewhere in rule or business practices. In Section R477-7-3, leave accrual language is placed together. In Subsection R477-7-4(2) "shall" is changed to "may". Subsection R477-7-4(6) is removed. Amendments in Section R477-7-13 restrict leave without pay to those expected to return and the maximum period is reduced to six months. Authority to grant exceptions is extended to agency heads. Additions are made to Section R477-7-14 explaining furlough. Subsection R477-7-15(13) is added to prohibit employees on Family Medical Leave Act (FMLA) from working a second job without written consent. Section R477-7-16 is rewritten to make changes to workers' compensation provisions. Section R477-7-17 is rewritten.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-43-103, 49-9-203, 63G-1-301, 67-19-6, 67-19-12.9, 67-19-14, 67-19-14.2, and 67-19-14.4

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AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) An employee in a position which[~~who~~] normally requires working[~~works~~] 40 hours or more per pay period shall be eligible for all leave benefits, unless the employee is in a position specifically designated as ineligible for leave benefits. An employee in a position which normally requires working less than 40 hours per pay period is ineligible for leave benefits.[~~, except those identified as career service exempt in Section R477-4-10, is eligible for leave benefits. An employee receives leave benefits in proportion to the time paid.~~]

([~~a~~]2) An eligible employee [~~who normally works 40 or more hours per pay period~~]shall accrue annual, sick and holiday[~~sick~~] leave in proportion to the time paid as determined by DHRM.

([~~b~~]3) An employee shall use leave in no less than quarter hour increments.

[~~(2) A seasonal, temporary, or part-time employee working less than 40 hours per pay period is not eligible for paid leave.~~

~~(3) Accrual rates for sick, holiday and annual leave are determined on the Annual, Sick and Holiday Leave Accrual table available through DHRM.~~

~~——~~](4) An employee may not use annual, sick, converted sick, compensatory, excess or holiday leave before accrued.

(5) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.

(6) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

[~~(7) An employee on paid leave shall continue to accrue annual, holiday and sick leave.~~

~~——~~]([~~8~~]7) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a)[~~(i)~~] An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

([~~ii~~]b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

([~~b~~]c) Annual, sick and holiday leave may not be used or accrued after the last day worked.[~~An employee may transfer this payout, minus all nondeferred taxes, to a 401(k) or 457 account up to the amount allowed by IRS regulation.~~]

([~~c~~]i) No leave on leave may accrue or be paid on the cashed out leave.

(ii) Only leave without pay or administrative leave may be used after the last day worked.

[~~(d) Leave cannot be used or accrued after the last day worked, except for FMLA or other medical reasons, or administrative leave specifically approved by management to be used after the last day worked.~~

~~——~~]([~~9~~]6) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:
(a) New Years Day -- January 1
(b) Dr. Martin Luther King Jr. Day -- third Monday of January
(c) Washington and Lincoln Day -- third Monday of February
(d) Memorial Day -- last Monday of May
(e) Independence Day -- July 4
(f) Pioneer Day -- July 24
(g) Labor Day -- first Monday of September
(h) Veterans' Day -- November 11
(i) Thanksgiving Day -- fourth Thursday of November
(j) Christmas Day -- December 25
(k) Any other day designated as a paid holiday by the Governor.

[~~(2) The following employees are eligible to receive holiday leave:~~

~~(a) A full-time employee shall accrue ten hours of paid holiday leave on holidays.~~

~~(b) A part-time career service employee and a partner in a shared position who normally works 40 hours or more per pay period shall receive holiday leave in proportion to the hours paid in the pay period in which the holiday falls.~~

~~——~~]([~~3~~]2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed ten hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, [~~and an employee is regularly scheduled to work on the following Monday, ~~]the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, [~~and an employee is regularly scheduled to work on the preceding Friday, ~~]the preceding Friday shall be observed as a holiday.

([~~4~~]3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

[~~(5) An employee receives holiday leave in proportion to the number of hours paid during the pay period in which the holiday falls.~~ ~~]([a]~~4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

([~~b~~]5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.[

~~(c) An employee in a leave without pay status shall receive holiday leave in proportion to the time paid in the pay period in which the holiday falls.~~]

R477-7-3. Annual Leave.

(1) An eligible employee [~~eligible for annual leave~~]shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years --six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee under the following conditions:

(a) an employee described in Section 67-22-2, an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

([~~2~~]3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all [~~state~~]eligible employment in which the employee [~~was eligible to~~]accrued leave.

([~~3~~]4) The first ten hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

([~~4~~]5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

([~~5~~]6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.[

~~(6) The maximum annual leave accrual rate shall be granted to a certain employee under the following conditions:~~

~~(a) an employee described in Section 67-22-2, an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.~~

~~(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.~~

~~(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.~~

~~(d) The employee may not be eligible for any transfer of leave from other jurisdictions.~~

~~(e) Other provisions of leave shall apply under Section R477-7-1.~~]

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave[~~with pay in proportion to the time paid each pay period~~], not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Sick leave [~~shall~~]may be granted for[~~:~~

~~(a)~~] preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or temporary disability of the employee, a spouse, children or parents living in the employee's home; or qualifying FMLA purposes.

[~~(b) FMLA purposes under Section R477-7-15.~~

~~]~~(3) Agency management may grant exceptions for other unique medical situations.

(4) An employee shall [~~arrange for a telephone report to supervisors at~~]contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.[~~Management may require reports for serious illnesses or injuries.~~]

(5) Any application for a grant of sick leave to cover an absence that exceeds four successive working days shall be supported by administratively acceptable evidence.

(6) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

[~~(6) After filing a resignation notice, an employee must support a sick leave request with a health care provider's certificate.~~

~~]~~(7) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

(b) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

An employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

(1)(a) Converted sick leave hours accrued prior to January 1, 2006 shall be Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall be Program II converted sick leave hours.

(2) To be eligible, an employee must have accrued a total of 144 hours or more of sick leave in Program I and Program II combined at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to Program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in Program I and Program II combined is 320.

(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.

(d) In order to prevent or reverse the conversion, an employee shall:

(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or

(ii) notify agency management no later than the end of February in order to reverse the conversion.

(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in Program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) Upon retirement, 25%[~~percent~~] of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(c) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6(4)(b) if the converted sick leave was accrued in Program II.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued after January 1, 2006 shall be Program II sick leave hours.

(2) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(3) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) Continuing health and life insurance.

(i) The employing agency shall provide the same health and life insurance benefits as provided to current employees until the employee reaches the age eligible for Medicare or up to the following number of years, whichever comes first.

[~~(A) three years if the employee retires during calendar year 2008:~~

~~——~~]([~~B~~]A) two years if the employee retires during calendar year 2009[~~:~~];

([~~C~~]B) one year if the employee retires during calendar year 2010; or

([~~D~~]C) zero years if the employee retires after calendar year 2010.

(ii) Health insurance provided shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(iii) Life insurance provided shall be the minimum authorized coverage provided for all state employees at the time the employee retires.

(iv) The retiree shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(b) [~~Twenty five percent~~]25% of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, an additional amount shall be deducted from the employees remaining Program I sick leave balance as follows.

(A) [~~288 hours if the employee retires during calendar year 2008;~~

~~——(B)~~]192 hours if the employee retires during calendar year 2009;

([~~C~~]B) 96 hours if the employee retires during calendar year 2010; or

([~~D~~]C) zero hours if the employee retires after calendar year 2010.

([~~C~~]D) The remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(4)(b)(i) shall be used to provide the following benefit.

(i) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until he reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(ii) When the employee [~~reaches the age~~]becomes eligible for Medicare, [~~he may purchase~~]a Medicare supplement policy provided by PEHP may be purchased[~~for himself~~] at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(iii) [~~After~~]When the employee [~~reaches the age~~]becomes eligible for Medicare, [~~he may purchase~~]a PEHP health insurance policy, or another state approved policy[~~program~~], may be purchased for a spouse until the spouse [~~reaches the age~~]is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(iv) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(4) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) [~~Twenty five percent~~]25% of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(4)(b)(ii) shall be deposited in the employees PEHP health reimbursement account at the greater of:

(i) the employees rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

R477-7-8. Jury Leave.

(1) An employee is entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(3) An employee choosing to use paid leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the [~~low org.~~]unit where the salary is recorded.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management for approval of a leave of absence without pay.

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work.

([~~a~~]b) The employee shall be entitled to previously accrued annual and sick leave.

([~~b~~]c) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law[~~, to include but not limited to the Americans with Disabilities Act~~].

(2) Nonmedical Reasons

(a) Approval may be granted for continuous leave for up to [~~one year~~]six months from the last day worked in the employee's regular position. Exceptions may be granted by the agency head.

[~~(b) Leave without pay may be granted only when there is an expectation that the employee will return to work. This section does not apply for military leave.~~

]~~]~~(c) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist.[~~—An employee may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.~~]

(d) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(e) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(3) Medical Reasons

(a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted block[~~ continuous~~], reduced schedule, or intermittent leave without pay for medical reasons.

(b) Medical leave without pay may be granted for no more than [~~one year~~]six months from the last day worked in the employee's regular position. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled. Exceptions may be granted by the agency head.

(c) Except as otherwise provided under the Family Medical Leave Act, an employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

[~~(c)~~](d) Upon request, [~~A~~]an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual[~~ An employee shall accrue annual and sick leave~~].

(b) [~~Full p~~]Payment of all [~~fringe~~]state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entitrely at the employee's expense.

(d) An employee shall return to the current position.

([~~d~~]e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An employee is entitled to 12 weeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, dependent child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is entitled to 26 weeks of family and medical leave during a [~~calendar year~~]12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee must:

(a) be employed by the state for at least one year;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(6) [~~When an employee chooses to use~~]To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as [~~possible~~]practicable in emergencies.

(7) An employee may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to

going into leave without pay status for the family and medical leave period.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave without pay for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) [~~An employee shall be eligible to return to work under Section R477-7-13.~~

~~(a)~~]If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

([~~b~~]a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Employees on FMLA may not work a second job without written consent of the agency head.

(14) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of Subsection R477-2-5(7).

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) [~~the~~]employee is declared medically stable by licensed medical authority;

(ii) [~~the~~]workers compensation fund terminates the benefit;

(iii) [~~the~~]employee has been absent from work for [~~one year~~]six months;

(iv) [~~the~~]employee refuses to accept appropriate employment offered by the state; or

(v) [~~the~~]employee receives Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual [~~An employee will continue to accrue state paid benefits and leave benefits~~]while the employee is receiving a workers compensation time loss benefit for up to [~~one year~~]six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(a) If an employee has applied for LTD and is determined eligible, and the employee elects to continue health insurance coverage, the employee shall be responsible to pay health insurance pursuant to R477-7-17(1)(b)(i).

(4) If the employee is able to return to work within [~~one year~~]six months of the last day worked in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(5) If the employee is unable to return to work within [~~one year~~]six months of the last day worked in the employee's regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee shall be separated from state employment unless prohibited by state or federal law[~~, to include but not limited to the Americans with Disabilities Act~~].

(6) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(7) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) An employee who is determined eligible for the Long Term Disability Program (LTD) shall be granted up to [~~one year~~]six months of medical leave without pay, [~~if warranted by a medical condition~~]unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position.

(a) The medical leave begins on the day after the last day the employee worked in the employee's regular position. LTD requires a [~~three month~~]waiting period before benefit payments begin.[~~ During this period, an employee may use available sick and converted sick leave. When those balances are exhausted, an employee may use other leave balances available.~~]

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked.

(i) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(c) Upon approval of the LTD claim:

(i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the

three month waiting period, the LTD benefit shall be offset by the amount received.

(ii) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. If the employee returns to work prior to [~~one year~~]six months after the last day worked in the employee's regular position, the employee has the option of buying back annual leave at the current hourly rate.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14(2)(b)(ii).

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14(2)(c)(i).

(2) An employee shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from leave without pay shall include:

(a) If an employee provides an administratively acceptable medical release allowing [~~him to~~]a return to work within [~~one year~~]six months of the last day worked in the employee's regular position, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) If an employee is unable to return to work within [~~one year~~]six months after the last day worked in the employee's regular position, the employee shall be separated from state employment unless prohibited by state or federal law[~~, to include but not limited to the Americans with Disabilities Act~~].

(4) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

R477-7-18. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) An employee may not receive donated leave until all individually accrued leave is used.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(5) Employees on FMLA may not work a second job without written consent of the agency head.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-[~~3~~]2(1).

KEY: holidays, leave benefits, vacations
Date of Enactment or Last Substantive Amendment: [~~September 22, 2008~~]July 1, 2009
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♦ ♦

Human Resource Management, Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE
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DAR FILE NO.: 32592
FILED: 04/30/2009, 11:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary language is removed. Decision-making authority is clarified regarding implementing work schedules. Nonsubstantive changes are also made to rearrange subsections, renumber and improve formatting.

SUMMARY OF THE RULE OR CHANGE: New Subsections R477-8-1(1), R477-8-1(3), and R477-8-1(4) clarify authority for implementing alternative work schedules, starting and quitting times. Section R477-8-2 (bus passes) and Subsection R477-8-1(1) are removed because they are unneccessary.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-6.7, and 20A-3-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to

business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:

J.J. Acker or Michael Tribe at the above address, by phone at 801-537-9096 or 801-538-3627, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or miketribe@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Work Period.

[~~(1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.~~

~~——~~]([~~a~~]1) The state's standard work week begins Saturday and ends the following Friday. Agencies may implement alternative work schedules from among those approved by the Executive Director, DHRM.[~~If approved for a flexible work schedule the beginning and ending date of the workweek may be different from the standard.~~]

([~~b~~]2) State offices are typically open Monday through Thursday from 7 a.m. to 6 p.m. Agencies may adopt extended business hours to enhance service to the public[~~, consistent with Section R477-8-5~~].

([~~c~~]3) [~~An employee may negotiate for~~]Agency management may approve a flexible starting and quitting time[~~s~~] for an employee[~~with the immediate supervisor~~] as long as scheduling is consistent with overtime provisions of Section R477-8-[~~5~~]4.

[~~(d) Agencies may implement alternative work schedules approved by the Director.~~

~~——~~]([~~e~~]4) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or[~~, with management approval,~~] adjusting their work schedule.

([~~f~~]5) An employee must work in increments of 15 minutes or more to receive salary for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

R477-8-2. [~~Bus Passes.~~

~~Agencies may participate in the purchase of bus passes for employees.~~

~~R477-8-3.~~]Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met; and

(c) not allow telecommuting employees to violate overtime rules.

R477-8-[4]3. Lunch and Break Periods.

(1) Management may require a minimum of 30 minutes noncompensated lunch period.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(3) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

R477-8-[~~5~~]4. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency; or

(iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime may not be compensated with actual payment. Schedule AB employees may not be compensated for compensatory time except with time off.

(5) Law enforcement, correctional and fire protection employees

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

(i) be a uniformed or plainclothes sworn officer;

(ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;

(iii) have the power to arrest;

(iv) be POST certified or scheduled for POST training; and

(v) perform over 80%[~~ percent~~] law enforcement duties.

(b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(i) 171 hours in a work period of 28 consecutive days; or

(ii) 86 hours in a work period of 14 consecutive days.

(c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(i) 212 hours in a work period of 28 consecutive days; or

(ii) 106 hours in a work period of 14 consecutive days.

(d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(i) the Fair Labor Standards Act, Section 207(k);

(ii) 29 CFR 553.230;

(iii) the state's payroll period;

(iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) Employees shall complete and sign a state approved biweekly time record that accurately reflects the hours actually worked, including:

(i) approved and unapproved overtime;

(ii) on-call time;

(iii) stand-by time;

(iv) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(v) approved leave time.

(b) An employee who fails to accurately record time may be disciplined.

(c) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(d) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record shall be disciplined.

(e) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time; or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: An employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call.

(i) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty.

(ii) [~~An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period.~~]On-call status shall be designated by a supervisor, either verbally or in writing, for a specified time period. Carrying a pager or cell phone

shall not constitute on-call time without a specific directive from a supervisor.

(iii) The employee shall record the hours spent in on-call status on [~~his~~]the official time [~~sheet~~]record in order to be paid.

(d) Stand-by time: An employee restricted to stand-by at a specified location ready for work must be paid full-time or overtime, as appropriate. An employee must be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(9) Commuting and Travel Time for FLSA exempt and nonexempt employees:

(a) Normal commuting time from home to work and back may not count towards hours worked.

(b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(c) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(e) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

(10) Excess Hours for FLSA exempt and nonexempt employees: An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management may pay out excess hours under one of the following:

(i) paid off automatically in the same pay period accrued;

(ii) paid off at any time during the year as determined appropriate by a state agency or division;

(iii) all hours accrued above the limit set by DHRM;

(iv) upon request of the employee and approval by the agency head; or

(v) upon assignment from one agency to another.

R477-8-[~~6~~]5. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-[~~7~~]6. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-[~~8~~]7. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline;

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-[~~9~~]8. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions.

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-[~~10~~]9. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond [~~his~~]the current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; [~~and~~]or

(b) the agency [~~shall~~]either pays to move the employee consistent with Section R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-1[~~1~~]0. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.[

~~(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).~~]

R477-8-1[~~2~~]1. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-12. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment
Date of Enactment or Last Substantive Amendment: [~~September 22, 2008~~]July 1, 2009
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

♦ ♦

Human Resource Management, Administration
R477-9
Employee Conduct

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 32594
FILED: 04/30/2009, 12:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language is changed for greater clarity regarding outside employment and conflict of interest. Language is removed that is covered already covered elsewhere in law. Nonsubstantive changes are also made to correct references to rule and Utah code.

SUMMARY OF THE RULE OR CHANGE: Amendments are made to Subsections R477-9-2(1)(a) and R477-9-3(1)(a) to clarify that outside employment may not interfere with an employee's performance. Subsection R477-9-4(5) is removed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63G-7-2, 67-19-6, and 67-19-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full-time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, time, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or nonprescribed controlled substances shall be subject to corrective action or discipline in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with [~~Subsection 63-30-36(c)(ii)~~]Section 63G-7-2 of the Utah Governmental Immunity Act.

(4) An employee may not drive a state vehicle or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to corrective action or discipline under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection [~~63-30-36(3)(c)(i)~~]63G-7-202(3)(c)(ii) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-2. Outside Employment.

(1) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment [~~must~~]may not interfere with an employee's [~~efficient~~]performance[~~ in his state position~~].

(b) Outside employment must not conflict with the interests of the agency or the State of Utah.

(c) Outside employment must not give reason for criticism or suspicion of conflicting interests or duties.

(d) An employee shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.

(e) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(i) An employee may grieve this decision.

(ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities [~~must~~]may not interfere with [~~the~~]an employee's [~~efficient~~]performance[~~ in his state position~~].

(b) Outside activities must not conflict with the interests of the agency or the State of Utah.

(c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.

(2) An employee may not use [~~his~~] a state position or any influence, power, authority or confidential information received in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee may not accept economic benefit tantamount to a gift, under Section 67-16-5 and the Governor's Executive Order on Ethics dated February 14, 2007, or other compensation that might be intended to influence or reward the employee in the performance of official business.

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state career service employee may voluntarily participate in political activity, except as restricted by this section or the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(1) The federal Hatch Act restricts the political activity of state government employees who work in connection with federally funded programs.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(c) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(i) The agency head shall consult with DHRM.

(ii) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(iii) Employees in violation of section R477-9-4(1)(c) shall be disciplined up to termination of their employment.

(d) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

(i) If it is determined [~~that~~]that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

(2) Any state career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence

without pay while being monetarily compensated for service in political office. An employee may not use annual leave while serving in a political office.

(3) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(4) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions may not be based on partisan political activity.[

~~(5) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.~~]

KEY: conflict of interest, government ethics, Hatch Act, personnel management
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 63G-7-2; 67-19-6; 67-19-19

♦ ♦

Human Resource Management, Administration
R477-10
Employee Development

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32597
FILED: 04/30/2009, 13:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments revise employee evaluation procedures and change approval requirements for liability prevention training.

SUMMARY OF THE RULE OR CHANGE: In Subsections R477-10-1(1)(a) and R477-10-1(2), the dates are removed allowing flexibility for review year. In Subsection R477-10-1(1)(e), the rating system table is removed and the required date is removed. In Section R477-10-4, Risk Management is added as an approving body for liability prevention training curriculum and language is streamlined.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-12.4

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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at the Division of Administrative Rules.

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J.J. Acker or Michael Tribe at the above address, by phone at 801-537-9096 or 801-538-3627, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or miketribe@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan[~~ by August 31 of each fiscal year~~].

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) [~~Each~~]An employee shall have the right to include written comments pertaining to the evaluation with [~~his~~]the employee's performance evaluation.

(e) Agency management shall select a performance management rating system[~~ or a combination of systems by August 31 to be effective for the entire fiscal year~~].[~~ The rating system shall be one or more of the following:~~

~~TABLE~~

~~SYSTEM~~	~~# RATING~~	~~POINTS~~
~~1~~	~~Pass~~	~~2~~
	~~Fail~~	~~0~~
~~2~~	~~Exceptional~~	~~3~~
	~~Successful~~	~~2~~
	~~Unsuccessful~~	~~0~~
~~3~~	~~Exceptional~~	~~3~~
	~~Highly Successful~~	~~2.5~~
	~~Successful~~	~~2~~
	~~Unsuccessful~~	~~0~~
~~4~~	~~Exceptional~~	~~3~~
	~~Highly Successful~~	~~2.5~~
	~~Successful~~	~~2~~
	~~Marginal~~	~~1~~
	~~Unsuccessful~~	~~0~~

~~]~~

(2) Each fiscal year a state employee shall receive a performance evaluation[~~ effective on or before the beginning of the first pay period of the following fiscal year~~].

(a) A probationary employee shall receive an additional performance evaluation at the end of the probationary period.

(b) The evaluation form shall include a space for the employee's comments. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-4. Liability Prevention Training.

Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM and the Division of Risk Management. Topics shall include[~~ but not be limited to~~]: [~~new employee orientation, ~~]prevention of [~~unlawful~~]workplace harassment, discrimination and violence[~~and supervisor training on prevention of workplace violence~~].

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12.4

♦ ♦

Human Resource Management, Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32596
FILED: 04/30/2009, 12:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Some language is replaced with more clear language, a subsection is added to clarify consistent application and nonsubstative changes correct references. Nonsubstantive changes correct references.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-11-1(2)(c)(ii) is amended to clarify executing a demotion and Subsection R477-11-3(1)(a)(ii) is added to clarify consistent application between agencies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-18, and 63G-2-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(b) The employee's reply must be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee through one of the following [~~methods~~]actions:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage.

(ii) [~~A demotion within the employee's current salary range may be accomplished by lowering the~~]An employee's current actual wage may be lowered within the current salary range, as determined by the agency head or designee.

(d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with Subsection 67-19-18(5) and Section R477-11-2.

(4) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee without right of appeal. Such dismissal or demotion may be for any reason or for no reason.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the agency head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under [~~Title 63, Chapter 2, the Governmental Access and Records Management Act~~]Section 63G-2-3.

(d) Following the hearing, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

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Human Resource Management, Administration
R477-12
Separations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32609
FILED: 04/30/2009, 15:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are made to Reduction in Force (RIF), instituting new preferential rehiring procedures to comply with S.B. 126. Also, amendments are made to retention point calculation to place greater emphasis on proficiency. This filing will replace current emergency rule. (DAR NOTE: S.B. 126 (2009) is found at Chapter 9, Laws of Utah 2009, and was effective 03/02/2009.)

SUMMARY OF THE RULE OR CHANGE: Section R477-12-3 is amended to place appropriate consideration for proficiency and seniority with proficiency being the primary factor in retention points. Proficiency criteria are articulated. Subsections R477-12-3(7) to R477-12-3(11) outline the new process for preferential rehiring of RIFs.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-17, and 67-19-18

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-3. Reduction in Force.

Reductions in force (RIF)[~~ required by inadequate funds, a change of workload, or lack of work~~] shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

(a) the categories of work to be eliminated, including positions impacted through bumping, as determined by management;

(b) a decision by agency management allowing or disallowing bumping;

(c) specifications of measures taken to facilitate the placement of affected employees through [~~normal attrition, retirement,~~]reassignment, transfer and relocation[~~, and movement~~] to vacant positions for which the employee qualifies;

(d) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

(e) a list of all affected employees showing the retention points for each employee.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency. The following job-related criteria found in work records may be considered:

(i) quality of work;

(ii) productivity;

(iii) skills demonstrated through work performance; or

(iv) other factors that relate to employee performance or conduct.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a [~~competitive~~]career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service tenure with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

(a) [~~temporary~~]time limited employees in schedule AI, AJ, or AL positions;

(b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is separated due to a RIF shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) An employee notified of separation due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

(7) [~~Reappointment of RIF'd individual.~~

~~(a) ~~]A [~~RIF'd individual is eligible for reappointment into a half time or greater ~~]career service [~~position for which he qualifies in a salary range comparable to or less than ~~]employee who is separated in a RIF shall be governed by the [~~last~~]rules in place at the time of separation.

(8) A career service [~~position held, for a period of one year following the date of separation~~]employee who is separated in a RIF shall be given preferential consideration as outlined in DHRM business practices when applying for a career service position.[~~Section R477-4-4 applies for selection of individuals from the reappointment register.~~]

([~~i~~]a) [~~The Executive Director, DHRM, shall maintain a reappointment register and shall make~~]Preferential consideration shall end once the [~~final determination on whether an eligible~~] RIF'd individual [~~meets the job requirements for~~]accepts a career service position[~~ vacancies~~].

([~~ii~~]b) A RIF'd individual [~~shall remain on the state reappointment register for one year from the date of separation, unless reappointed sooner~~]may be rehired under Section R477-4-7.

[~~(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's budgeted FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.~~

~~(c) When determining comparable salary ranges in cases of RIF eligibility, a comparison of the previous career service salary range to the current career service salary range maximum step is required. A RIF'd individual shall have RIF rights to any vacant position for which he qualifies. The basis for comparison shall be:~~

~~(i) The current salary range of a vacant position if it is equal to or lesser than the individual's previous salary range, or;~~

~~(ii) If the maximum step of the position previously held by the RIF'd individual has moved upward, the new range shall be used.~~

~~(d) A RIF'd individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual shall enjoy all the rights and privileges of a regular career service employee.~~

] ([~~e~~]c) At agency discretion, an individual [~~reappointed from a reappointment register~~]rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

[~~(8) Appeal rights of RIF'd individual. An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.~~

] (9) A [~~career service employee in an exempt position. Any~~]career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless

discharged for cause under these rules, shall be [~~placed on the reappointment register~~]given preferential consideration as outlined in Subsection R477-12-3(8).

[~~(a) The Executive Director, DHRM, shall maintain a reappointment register for this purpose. An individual on this register shall:~~

~~(i) be appointed to any half time or greater career service position for which the individual qualifies in a salary range comparable to the individual's last position in the career service, provided an opening exists; or~~

] [~~(ii) be appointed to~~](10) The RIF'd individual shall request to receive preferential consideration on any [~~lesser~~]career service position for which the individual [~~qualifies, pending the opening of a position at the last career service salary range held~~]applies, subject to DHRM verification.[

~~(b) The Executive Director~~] In order to receive preferential consideration on a career service position,[~~DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.~~

~~(c) The individual shall declare~~] a [~~desire to remain on the reappointment register upon inquiry by DHRM~~]RIF'd individual shall express a desire to receive it on each position for which the candidate applies.

([~~d~~]11) Prior to termination and in lieu of [~~placement on the reappointment register~~]a RIF, management may reassign an employee to a vacant career service position [~~consistent with Subsection R477-12-3(7)(c)~~]for which [~~he~~]the employee qualifies under Section R477-4-6.

KEY: administrative procedures, employees' rights, grievances, retirement
Date of Enactment or Last Substantive Amendment: July 1, 2009
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-17; 67-19-18

♦ ♦

Human Resource Management, Administration
R477-14
Substance Abuse and Drug-Free Workplace

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32641
FILED: 04/30/2009, 17:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments update drug and alcohol testing procedures and standards, simplify the rule, and discern between general employees, highly sensitive employees, and employees subject to federal regulations. Amendments also more clearly articulate pre-employment testing standards. References are also corrected.

SUMMARY OF THE RULE OR CHANGE: Subsections R477-14-1(7) and (8) and text in Subsection R477-14-1(9), (10), and (14) are removed. New language is grouped together for easier understanding in the new Subsections R477-14-1(9) through (11). Unnecessary Section R477-14-3 is removed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-18, 67-19-34, 63G-2-3, and 67-19-38

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/02/2009 at 9:00 AM, State Capitol, Rm. 250.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportational Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Employees[~~in non highly sensitive positions~~] are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;

(b) critical incident;

(c) post accident;

(d) return to duty; and

(e) follow up.

(7) [~~For employees in non highly sensitive positions, the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures.~~

~~(8) For employees in non highly sensitive positions, the State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test.~~

~~(9)~~]Final applicants for highly sensitive positions, or e[~~E~~]mployees who[~~hold highly sensitive positions,~~] are final candidates for, are transferred to, or are assigned the duties of a highly sensitive position[~~, and final applicants for highly sensitive positions~~] are subject to preemployment drug testing at agency discretion except as required by law.[~~one or more of the following drug or alcohol tests:~~

~~(a) reasonable suspicion;~~

~~(b) critical incident;~~

~~(c) post accident;~~

~~(d) return to duty;~~

~~(e) follow up;~~

~~(f) preemployment;~~

~~(g) random.~~

~~(10) For employees in highly sensitive positions, the State of Utah will use the same cutoff levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures, 49 CFR 382.107 (2002), Definitions, 49 CFR 382.201 (2002), Alcohol Concentration and 49 CFR 382.505 (2002), Other Alcohol Related Conduct.~~]

[~~(11)~~](8) Employees in highly sensitive positions, as [~~approved~~]designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(9) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(10) The State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(11) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Manual.

(12) Employees in [~~highly sensitive~~]federally regulated positions whose confirmation test for alcohol results are [~~.02 or greater~~]at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, must be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than [~~.02.~~]the applicable federal cut off level.

(13) Employees in [~~highly sensitive~~]federally regulated positions whose confirmation test for alcohol results are [~~.04 or greater~~]at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, [~~may be~~]are subject to corrective action or discipline.

(14) [~~Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.~~

~~(15)~~]Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform [~~his~~]assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

(1[~~6~~]5) The agency human resource field office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00;

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate, at [~~his~~]the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with [~~Title 63, Chapter 2~~]Section 63G-2-3.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in [~~his~~]the previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted for a violation occurring in the workplace, under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

[~~R477-14-3. Rule Distribution.~~

~~The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.~~

]**R477-14-4. Policy Exceptions.**

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

Date of Enactment or Last Substantive Amendment: [~~August 21, 2008~~]July 1, 2009
Notice of Continuation: December 6, 2006
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; [~~63-19-37~~]63G-2-3; 67-19-38

♦ ♦

Human Resource Management, Administration
R477-15
Workforce Harassment Policy and Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32590
FILED: 04/30/2009, 11:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule revise terminology, eliminate redundant and unnecessary language, and correct references.

SUMMARY OF THE RULE OR CHANGE: The title of the rule is changed to "Workplace Harassment". The term "sex" is replaced with "gender". The term "behavior" is removed, in favor of "conduct". In Subsections R477-15-2(2) and R477-15-3(2), unnecessary and redundant language is removed that refers to statements already covered in federal law or elsewhere in the body of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-18, and 63G-2-3, and the Governor's Executive Order on Prohibiting Unlawful Harassment

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service

and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 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:
J.J. Acker or Michael Tribe at the above address, by phone at 801-537-9096 or 801-538-3627, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or miketribe@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2009

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-15. Work[~~force~~]place Harassment Policy and Procedure.
R477-15-1. Purpose.

It is the State of Utah's policy to provide all employees a working environment that is free from [~~unlawful~~]discrimination and harassment based on race, religion, national origin, color, [~~sex~~]gender, age, disability, or protected activity under state and federal law.

R477-15-2. Policy.

(1) Workplace harassment includes the following subtypes:

(a) [~~behavior or~~]conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) [~~behavior or~~]conduct in violation of Section R477-15-1 that results in a tangible employment action [~~being taken~~]against the harassed employee.

(2) An employee [~~shall~~]may be subject to discipline [~~up to and including termination of employment~~]for workplace harassment [~~towards another employee provided that the harassment meets the requirements of Section R477-15-1~~], even if:

(a) the harassment is not sufficiently severe to warrant a finding of unlawful harassment, or

(b) the harassment occurs outside of scheduled work time or work location.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

R477-15-3. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this policy, or is otherwise engaged in protected activity.[~~(2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to disciplinary action.~~]

R477-15-6. Records.

(1) A separate confidential file of all workplace harassment complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-30[**4**]5[~~, Government Records Access and Management Act~~].

(d) Information contained in the workplace harassment file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment.

(3) Participants in any workplace harassment proceeding shall treat all information pertaining to the case as confidential[~~,~~].

KEY: administrative procedures, hostile work environment
Date of Enactment or Last Substantive Amendment: July 1, 200[8]9
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3; Governor's Executive Order on Prohibiting Unlawful Harassment, December 13, 2006

Human Services, Recovery Services
R527-300
Income Withholding

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32565
FILED: 04/28/2009, 12:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a purpose and authority section and indicate that the minimum arrears payment the office may accept from an obligor that owes back child support will be based on 10% of the obligor's current support payment. This amendment also corrects a legal citation at the end of the rule per recodification.

SUMMARY OF THE RULE OR CHANGE: This amdendment add a purpose and authority section, and adds a minimum arrears payment section, which states that the office may accept a

minimum payment of 10% of the obligor's current support payment. It also corrects a legal citation at the end of the rule per recodification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-11-320(1) and Section 78B-12-212

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no way to determine the cost of savings to the state, because the office has no way of knowing the how many individuals each year will be required to make a monthly arrears payment, as well as determining the amount of back child support that each individual owes, whether or not the individual still owes current support, or the individual's available income based on a computed assessment. These factors are all considered when determining a monthly arrears payment for an obligor. Also, there is no way to determine the number of obligor's who may want to take advantage of the minimum payment amount and the amount of the current or past child support award.

❖ LOCAL GOVERNMENTS: There are no anticipated costs to the local government because administrative rules of ORS do not apply to local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs for small business because the changes affect the internal procedures of ORS/CSS and provide clarification to the child support staff. There may be a cost or savings to an individual obligor, but it is difficult to determine because each individual's back child support amount is different, the amount the obligor may or may not be paying each month for current support varies, as well as the individual available income based on a computed assessment. Each of these factors would help determine the cost or savings to the individual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: ORS cannot provide firm figures because there is no way of knowing how many obligors will be required to pay a monthly arrears payment, as well as determining whether or not the individual is obligated to pay current child support or what his/her available income may be based on a computed assessment by the office.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed rule will have little or no fiscal impact on local businesses. Lisa Michelle Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-300. Income Withholding.
R527-300-1. Authority and Purpose.

[~~1. Section 62A-11-107 requires that the Office of Recovery Services/Child Support Services (ORS/CSS) provide certain services and allows ORS/CSS to adopt, amend and enforce rules as needed to carry out its duties.~~]1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Sections 62A-1-111 and 62A-11-107.

[~~2. The purpose of this rule is to outline ORS/CSS procedures to determine when income withholding is appropriate, define the limits on income withholding, and specify how to contest and terminate income withholding actions.~~]2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for income withholding.

R527-300-2. Income Withholding[~~Definition and Criteria~~].

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401([~~6~~]5) or R527-300-[~~3~~]2, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

R527-300-3. Determining Delinquency.

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment,

income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

R527-300-4. Affidavit of Delinquency.

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

R527-300-5. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

R527-300-6. [~~Percentage of~~]Income Subject To Withholding.

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act as cited in 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

R527-300-7. Arrears Payments.

If the obligor owes back child support, ORS/CSS will work with the obligor in an effort to encourage timely payment of the debt by the obligor. If the obligor is unable to pay the debt in full, the office may accept monthly payments towards the back child support debt. The minimum arrears payment will be based on 10% of the current support obligation. Exceptions to the minimum arrears payment will be determined by the ORS or CSS Director.

R527-300-[~~7~~]8. Modification of Withholding Amounts.

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

R527-300-[~~8~~]9. Income Withholding Termination.

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

R527-300-[~~9~~]10. Contesting an Income Withholding Order Issued by Another State.

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

KEY: child support, income, wages
Date of Enactment or Last Substantive Amendment: [~~September 4, 2008~~]2009
Notice of Continuation: September 7, 2007
Authorizing, and Implemented or Interpreted Law: 62A-11-401; 62A-11-404; 62A-11-405; 62A-11-406; 62A-11-413; 62A-11-414; 78B-[~~14~~]11-506

Insurance, Administration
R590-222
Viatical Settlements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32579
FILED: 04/29/2009, 12:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended due to the passage of H.B. 170 in 2009, and changes to the National Association of Insurance Commissioners' (NAIC) Viatical Model Act. Other changes have been made to clarify and make grammatical corrections to the rule. (DAR NOTE: H.B. 170 (2009) is found at Chapter 355, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule is being changed to add a renewal application; increase the amount of the surety bond for providers from $50,000 to $250,000; require the annual report be submitted electronically to the department; require disclosure of the amount and method of calculating the compensation to a producer; and change the name "Viatical" to "Life" Settlement throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-36-119

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: All life settlement forms and applications will need to be refiled with the department electronically by the 24 licensed life settlement providers. Department personnel will need to review these filings. No additional personnel will be required to do so. There will be no additional cost to file these forms and thus no impact on the department or state's revenues.

❖ LOCAL GOVERNMENTS: This rule deals with the relationship between the department and its licensees. It will have no effect on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Providers will be required to revise their viatical forms, which can probably be done in-house with no additional expense. Since these forms are electronic, there will probably be few, if any, hard copies that will need to be disposed of and replaced by new forms. Providers who do not already have a bond in the amount of $250,000 will need to purchase one. Many states already require a $250,000 bond. As a result some of the providers may already have a $250,000 bond that may cover them in all the states they are licensed. Currently there are 24 licensed life settlement providers and less than a dozen producers. Most of the providers are small employers. None are located in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The large employer life settlement providers will be required to revise their viatical forms, which can probably be done in-house with no additional expense. Since these forms are electronic there will probably be few, if any, hard copies that will need to be disposed of and replaced by new forms. Providers who do not already have a bond in the amount of $250,000 will need to purchase one. Many states already require a $250,000 bond so some providers may already have one. They will need to check their policies to see if they cover their business in other states and if not, add multiple states to it.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have little if any fiscal impact on providers unless they have to purchase a higher amount on their bond. The cost will vary from provider to provider depending on multiple circumstances. D. Kent Michie, Commissioner

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/09/2009 at 9:00 AM, State Office Building (behind the Capitol), 450 North State St, Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-222. [~~Viatical~~]Life Settlements.
R590-222-2. Purpose and Scope.

The purpose of this rule is to implement procedures for licensure of [~~viatical~~]life settlement providers and producers, provider annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for [~~viatical~~]life settlement payments, and procedures for requests for verification of coverage.

This rule applies to all [~~viatical~~]life settlement providers and producers and to insurers whose policies are being [~~viaticated~~]settled.

R590-222-3. Incorporation by Reference.

The following appendices are hereby incorporated by reference within this rule and are available at [~~http://~~]www.insurance.utah.gov/[~~rulesindex~~]legalresources/currentrules.html:

(1) Appendix A, Utah [~~Viatical~~]Life Settlement Provider Initial Application, dated [~~2007~~]2009.

(2) Appendix B, Utah [~~Viatical~~]Life Settlement Provider Annual Report, dated [~~2007~~]2009.

(3) Appendix C, NAIC [~~Viatical~~]Life Settlement brochure Selling Your Life Insurance Policy, dated 2004.

([~~5~~]4) Appendix D, NAIC Verification of Coverage for Life Insurance Policies, dated 2004.

(5) Appendix E, Utah Life Settlement Provider Renewal Application, dated 2009.

R590-222-4. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for [~~viatication~~]settlement.

(2) [~~"Life expectancy" means the mean number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.~~

~~(3)~~]"Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

R590-222-5. License Requirements.

(1) [~~Viatical~~]Life Settlement Provider License.

(a) A person may not perform, or advertise any service as a [~~viatical~~]life settlement provider in Utah, without a valid license.

(b) A [~~viatical~~]life settlement provider license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website[~~,~~]. For the initial application, see Appendix A and for the renewal application, see Appendix E;

(ii) with an initial application, provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that [~~viatical~~]life settlement proceeds will be sent to the [~~viator~~]owner within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) with an initial application, provide the antifraud plan as required by Section 31A-36-117;

(iv) with both an initial and renewal application, provide any other information requested by the commissioner; and

(v) with both an initial and renewal application, provide evidence of financial responsibility in the amount of $[~~50,000~~]250,000 in the form of a surety bond issued by an insurer authorized [~~corporate surety or a deposit of cash, certificates of deposit or securities or any combination thereof:~~]in this state. The surety bond shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the life settlement provider;

(A) The evidence of financial responsibility shall remain in force for as long as the licensee is active.

(B) The bond[~~, deposit or combination thereof,~~] shall not be terminated or reduced without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a [~~financial instrument~~]surety bond, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the [~~viatical~~]life settlement provider is licensed as a [~~viatical~~]life settlement provider as long as the benefits provided by the surety bond extend to this state.

(d) The commissioner may refuse to issue or renew a license of a [~~viatical~~]life settlement provider if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If a [~~viatical~~]life settlement provider fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a [~~viatical~~]life settlement provider has, at the time of license renewal, [~~viatical~~]life settlements where the insured has not died, the [~~viatical~~]life settlement provider shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the [~~viatical~~]life settlement provider properly assigns, sells, or otherwise transfers the [~~viatical~~]life settlements where the insured has not died; or

(B) the date that the last insured covered by [~~viatical~~]a life settlement transaction has died;

(ii) designate, in writing, either the [~~viatical~~]life settlement provider that entered into the [~~viatical~~]life settlement or the producer who received commission from the [~~viatical~~]life settlement, if applicable, or any other [~~viatical~~]life settlement provider or producer licensed in this state, to make all inquiries to the [~~viator~~]owner, or the [~~viator's~~]owner's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident [~~viatical~~]life settlement provider unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) [~~Viatical~~]Life Settlement Producer license.

[~~Viatical~~]Life settlement producers shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

R590-222-6. Annual Report.

(1) By March 1 of each calendar year, each [~~viatical~~]life settlement provider licensed in this state shall submit a report to the commissioner. Such report shall be limited to all [~~viatical~~]life settlement transactions where the [~~viator~~]owner is a resident of this state.

(2) This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year for each [~~viatical~~]life settlement contracted during the reporting period:

(a) a coded identifier;

(b) policy issue date;

(c) date of the [~~viatical~~]life settlement;

(d) net death benefit [~~viaticated~~]settled;

(e) amount available to the policyholder under the terms of the policy at the time of the settlement; and

(f) net amount paid to [~~viator~~]owner.

(3) The completed report is to be submitted by email to life.uid@utah.gov.

R590-222-7. Payment Requirements.

(1) Payment of the proceeds of a [~~viatical~~]life settlement pursuant to Subsection 31A-36-110(3) shall be by means of wire transfer to an account designated by the [~~viator~~]owner or by certified check or cashier's check.

(2) Payment of the proceeds to the [~~viator~~]owner pursuant to a [~~viatical~~]life settlement shall be made in a lump sum except where the [~~viatical~~]life settlement provider has purchased an annuity or similar financial instrument issued by a licensed life insurance [~~insurer~~]company or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the [~~viatical~~]life settlement by the [~~viatical~~]life settlement provider or escrow agent, is not permissible without written consent of the [~~viator~~]owner.

R590-222-8. Disclosures.

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time of the application for the [~~viatical~~]life settlement, shall be provided in a separate document that is signed by the [~~viator~~]owner and the [~~viatical~~]life settlement provider or producer, and shall contain the following information:

(a) There are possible alternatives to a [~~viatical~~]life settlement, including any accelerated death benefits, [~~or policy~~]loans, or other benefits offered under the [~~viator's~~]owner's life insurance policy.

(b) Some or all of the proceeds of the [~~viatical~~]life settlement may be taxable under federal [~~income tax~~]and state [~~franchise and~~]income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the [~~viatical~~]life settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a [~~viatical~~]life settlement may adversely affect the [~~viator's~~]owner's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The [~~viator~~]owner has the right to [~~terminate~~] rescind a [~~viatical~~]life settlement within 15 calendar days after the receipt of the [~~viatical~~]life settlement proceeds by the [~~viator~~]owner as provided by Subsection 31A-36-109(7). If the insured dies during the [~~15-day~~]rescission period, the settlement is [~~terminated,~~]deemed to have been rescinded. Rescission is subject to repayment of all [~~viatical~~]life settlement proceeds and any premiums, loans and loan interest to the [~~viatical~~]life settlement provider[~~ or purchaser~~].

(f) Funds will be sent to the [~~viator~~]owner within three business days after the [~~viatical~~]life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a [~~viatical~~]life settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the [~~viator~~]owner. Assistance should be sought from a financial adviser.

(h) Disclosure to an [~~viator~~]owner shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) [~~Viatical~~]Life Settlement brochure, dated 2004, that describes the process of [~~viatical~~]life settlements, see Appendix C.

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a [~~viatical~~]life settlement provider or producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the [~~viatical~~]life settlement between the [~~viator~~]owner and the [~~viatical~~]life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) [~~The~~]Following execution of a life settlement, the insured may be contacted [~~by either the viatical settlement provider or producer or its authorized representative~~]for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number. This contact [~~is~~]shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

(2) A [~~viatical~~]life settlement provider shall provide the [~~viator~~]owner with at least the following disclosures no later than the date the [~~viatical~~]life settlement is signed by all parties. The disclosures shall be conspicuously displayed in the [~~viatical~~]life settlement or in a separate document signed by the [~~viator~~]owner[~~ and the viatical settlement provider or producer,~~] and provide the following information:

(a) The affiliation, if any, between the [~~viatical~~]life settlement provider and the issuer of the insurance policy to be [~~viaticated~~]settled.

(b) The document shall include the name, business address and telephone number of the [~~viatical~~]life settlement provider.

(c) [~~A viatical settlement producer shall disclose to a prospective viator the existence and source of the producer's compensation~~]The amount and method of calculating the compensation paid or to be paid to the life settlement producer or any other person acting for the owner in connection with the transaction. The term "compensation" includes anything of value paid or given [~~to a viatical settlement producer~~]for the placement of a policy.

(d) If an insurance policy to be [~~viaticated~~]settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be [~~viaticated~~]settled, the [~~viator~~]owner shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with [~~his or her~~]an insurance producer or the insurer issuing the policy for advice on the proposed [~~viatical~~]life settlement.

(e) State the dollar amount of the current death benefit payable to the [~~viatical~~]life settlement provider under the policy or certificate. If known, the [~~viatical~~]life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the [~~viator or~~]owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the [~~viatical~~]life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

R590-222-9. Standards for Evaluation of Reasonable Payments.

The [~~viatical~~]life settlement provider is responsible for assuring that the net proceeds from the [~~viatical~~]life settlement exceed the benefits that are available at the time of the [~~viatical~~]life settlement under the terms of the policy including cash surrender, long-term care, and accelerated death benefits.

R590-222-10. Requests for Verification of Coverage.

(1) Insurers, authorized to do business in this state, whose policies are being [~~viaticated~~]settled, shall respond to a request for verification of coverage from a [~~viatical~~]life settlement provider or producer within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for

[~~Individual~~]Life Insurance Policies, dated 2004, which has been completed by the [~~viatical~~]life settlement provider or producer in accordance with the instructions on the form, see Appendix D;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies dated 2004, which has been completed by the [~~viatical~~]life settlement provider or producer in accordance with the instructions on the form, see Appendix D; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being [~~viaticated~~]settled may not charge a fee for responding to a request for information from a [~~viatical~~]life settlement provider or producer in compliance with this rule in excess of any usual and customary charges to policyholders, certificate holders or insureds for similar services.

(3) The insurer whose policy is being [~~viaticated~~]settled shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificate holder and, where the policyholder or certificate holder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

R590-222-11. Advertising.

(1) This section shall apply to advertising of [~~viatical~~]life settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a [~~viatical~~]life settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving [~~viators~~]owners, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the [~~viatical~~]life settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective [~~viators~~]owners as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the [~~viatical~~]life settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the [~~provider of viatical settlements or~~]party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a [~~viatical~~]life settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the [~~viatical~~]life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the [~~viatical~~]life settlement licensee, or receives any payment or other consideration from the [~~viatical~~]life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a [~~viatical~~]life settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, [~~viatical~~]life settlement providers, [~~viatical~~]life settlement producers, [~~viatical~~]life settlement investment agents, anyone who may recommend a [~~viatical~~]life settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the [~~viatical~~]life settlement licensee shall be clearly identified in all advertisements about the licensee or its [~~viatical~~]life settlement, products or services, and if any specific [~~viatical~~]life settlement is advertised, the [~~viatical~~]life settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the [~~viatical~~]life settlement provider shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a [~~viatical~~]life settlement licensee, name of a particular division of the [~~viatical~~]life settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the [~~viatical~~]life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the [~~viatical~~]life settlement licensee, or to create the impression that a company other than the [~~viatical~~]life settlement licensee would have any responsibility for the financial obligation under a [~~viatical~~]life settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective [~~viators~~]owners into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a [~~viatical~~]life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing [~~viatical~~]life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or

contact the department of insurance to find out if the state requires licensing and, if so, whether the [~~viatical~~]life settlement provider or producer is licensed.

(15) An advertisement shall not create the impression that the [~~viatical~~]life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its [~~viatical~~]life settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

(a) any [~~viatical~~]life settlement licensee or its business practices or methods of operations;

(b) the merits, desirability or advisability of any [~~viatical~~]life settlement;

(c) any [~~viatical~~]life settlement; or

(d) any life insurance policy or life insurance [~~insurer~~] company.

(18) If the advertisement emphasizes the speed with which the [~~viatication~~]settlement will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the [~~viator~~]owner.

(19) If the advertising emphasizes the dollar amounts available to [~~viators~~]owners, the advertising shall disclose the average purchase price as a percent of face value obtained by [~~viators~~]owners contracting with the licensee during the past six months.

R590-222-12. Reporting of Fraud.

(1) A person engaged in the business of [~~viatical~~]life settlements under Title 31A, Chapter 36, that knows or has reasonable cause to [~~believe~~]suspect that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

R590-222-13. Prohibited Practices.

(1) A [~~viatical~~]life settlement provider or producer shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a [~~viatical~~]life settlement provider or producer is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the [~~viator~~]owner and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A [~~viatical~~]life settlement provider shall not also act as a [~~viatical~~]life settlement producer in the same [~~viatical~~]life settlement, whether entitled to collect a fee directly or indirectly.

(3) A [~~viatical~~]life settlement producer shall not seek or obtain any compensation from the [~~viator~~]owner without the written agreement of the [~~viator~~]owner obtained prior to performing any services in connection with a [~~viatical~~]life settlement.

(4) A [~~viatical~~]life settlement provider or producer shall not unfairly discriminate in the making or soliciting of [~~viatical~~]life settlements, or discriminate between [~~viators~~]owners with dependents and without dependents.

(5) A [~~viatical~~]life settlement provider or producer shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the [~~viator~~]owner, or to any other person acting as an agent of the [~~viator~~]owner, other than a [~~viatical~~]life settlement producer, with respect to the [~~viatical~~]life settlement.

R590-222-14. Filing of Forms.

(1) All forms to be used for a [~~viatical~~]life settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the [~~viatical~~]life settlement, disclosure to the [~~viator~~]owner, notice of intent to [~~viaticate~~]settle, verification of coverage, and application.

(2) A form filing consists of:

(a) a cover letter on the licensee's letterhead that provides the following:

(i) a list of the forms being filed by title and any identification number given the document;

(ii) a description of the filing; and

(iii) an indication whether the form:

(A) is new; or

(B) replacing or modifying a previously filed form; if so, describe the changes being made, the reason, and the date previously filed; and

(b) a copy of each form to be filed.

(3) The form filing and any responses must be submitted via email to life.uid@utah.gov.

(4) If a filing has been rejected, the filing must be resubmitted as a new filing.

(5) If a Filing Objection Letter has been issued, the response must include:

(a) a new cover letter identifying the changes made; and

(b) one copy of the revised [~~document~~]form.

(6) Companies may request the status of their filing by email, telephone, or mail after 30 days from the date of submission.

KEY: insurance, [~~viatical~~]life settlement
Date of Enactment or Last Substantive Amendment: [~~August 4, 2008~~]2009
Notice of Continuation: June 2, 2008
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-36-119

Insurance, Administration
R590-244
Individual and Agency Licensing Requirements

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 32541
FILED: 04/22/2009, 11:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule replaces Rules R590-101, R590-123 and R590-141, which are being repealed because they are out of date and do not conform to the National Association of Insurance Commissioners (NAIC) uniformity standards. In addition, new requirements are being implemented. This is not an amendment of the old rules, but rather an entirely new rule which intentionally incorporates parts, but not all of what was included in the rules being repealed.

SUMMARY OF THE RULE OR CHANGE: This rule provides standards for an individual or agency licensee to obtain, renew or reinstate a license and make other miscellaneous license amendments. Standards are also set for the initial appointment or termination of an individual or agency licensee to an insurer; and the initial designation or termination of an individual licensee to an agency's license. Also, with few exceptions, all license applications and forms will be required to be filed electronically. Basically, this rule replaces the current rules that describe outdated processes, and now requires electronic submission of applications and changes language to comply with NAIC uniformity standards we are now using. The rule also does away with the 30-day late renewal period so that a license expires on the expiration date.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-23a-104, 31A-23a-110, 31A-23a-111, 31A-23a-115, 31A-23a-302, 31A-25-201, 31A-25-208, 31A-26-202, 31A-26-210, 31A-26-213, 31A-35-104, 31A-35-301, 31A-35-401, and 31A-35-406

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: This rule will create no additional work for the department since the department and the insurance industry are already doing what is required according to this rule.
- LOCAL GOVERNMENTS: This rule deals with the relationship between the department and their licensees and will not affect local governments.
- SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Since the procedure to apply for a license, as noted in the rule, is already being followed by the industry, there will be no fiscal impact on small or large businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the procedure to apply for a license, as noted in the rule, is already being followed by the industry, there will be no fiscal impact on individuals or small and large businesses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on Utah businesses. D. Kent Michie, Commissioner

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/04/2009 at 10:00 AM, State Office Building (behind the Capitol), 450 N State St, Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-244. Individual and Agency Licensing Requirements.
R590-244-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-35-104, 301(1) and 401(2) that authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Chapters 23a, 25, 26 and 35 is to be made to the commissioner;

(3) Subsections 31A-23a-111(10), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) that authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Chapters 23a, 25, 26, and 35;

(4) Subsection 31A-23a-115(1) that authorizes the commissioner to adopt a rule prescribing reporting requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under Chapters 23a; and

(5) Subsections 31A-23a-302(2) and 31A-26-210(1) that authorize the commissioner to adopt a rule prescribing reporting requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Chapters 23a and 26.

R590-244-2. Purpose and Scope.

(1) The purpose of this rule is to provide standards for:

(a) an individual or agency licensee for:

(i) obtaining, renewing or reinstating a license; and

(ii) making other miscellaneous license amendments;

(b) an insurer for the initial appointment or the termination of an appointment of an individual or agency licensee; and

(c) an agency for the initial designation or the termination of a designation of an individual licensee to the agency's license.

(2) Scope.

(a) This rule applies to all individuals and agencies licensed under Chapters 23a, 25, 26 and 35.

(b) This rule applies to all admitted insurers doing business in Utah.

(c) Title insurance licensees are exempt from this rule on the effective date of a rule addressing licensing for title licensees adopted by the Title and Escrow Commission pursuant to Section 31A-2-204 (2)(a)(ii).

R590-244-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Subsections 31A-1-301, 31A-23a-102, 31A-26-102, and 31A-35-102 and the following:

(1) "Active license" means a license under which a licensee has been granted authority by the commissioner to engage in some activity that is part of or related to the insurance business.

(2) "Inactive license" means a formerly active license where a licensee is no longer authorized by the commissioner to engage in some activity that is part of or related to the insurance business.

(3) "Lapse" means the inactivation of an active license by expiration of the period for which the license was issued or by operation of law.

(4) "License application" means information submitted by a license applicant to provide information about the license applicant that is used by the commissioner to evaluate the applicant's qualifications and decide whether to:

(a) issue or decline to issue a license;

(b) add or decline to add an additional line of authority to an active license;

(c) renew or decline to renew an active license; or

(d) reinstate or decline to reinstate an inactive license.

(5) "Line of authority" means a line of insurance of a particular subject matter area within a license type for which the commissioner may grant authority to do business.

(6) "License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.

(7) "NIPR" means an electronic application software provided by the National Insurance Producer Registry (NIPR).

(8) "Reinstate" means the activation of an inactive license within 365 days of the inactivation date.

(9) "Renewal" means the continuation of an active license from one two-year licensing period to another, except that the licensing period for a bail bond agency is one year.

(10) "SIRCON" means an electronic application software provided by SIRCON.

(11) "Termination for cause" means

(a) an insurer or an agency has ended its relationship with a licensee or has cancelled the licensee's authority to act on behalf of the insurer or agency for one of the reasons identified in 31A-23a-111(5); or

(b) a licensee has been found to have engaged in any of the activities identified in 31A-23a-111(5) by a court, government body, or self-regulatory organization authorized by law.

R590-244-4. Requirement to Electronically Submit License Applications, Appointments, Designations, and License Amendments.

(1) Except as otherwise provided in this rule the following shall be submitted electronically to the department using http://www.sircon.com/utah (SIRCON) or http://www.nipr.com/ (NIPR):

(a) all individual and agency license applications under chapters 23a, 25, 26, and 35 as prescribed in R590-244-6, 7, and 8 for:

(i) a new license;

(ii) an additional license type or line of authority;

(iii) a license renewal; or

(iv) a license reinstatement;

(b) all appointments, termination of appointments, designations, and terminations of designations as prescribed in R590-244-9 and 10;

(c) all miscellaneous license amendments pertaining to individual and agency licenses under Chapters 23a, 25, 26 and 35 as prescribed in R590-244-11; and

(d) any additional documentation required in connection with an application, except as shown in (iv) below, including but not limited to:

(i) written explanation and documentation for positive responses to background questions on a license application;

(ii) evidence of meeting specific experience, bonding, or other requirements for certain license types or lines of authority; or

(iii) evidence of meeting continuing education requirements for a renewal or reinstatement application when there is a question regarding the number of course hours completed.

(iv) If an electronic attachment of a document required in connection with an application is not available in the attachment utility from SIRCON or NIPR, and the document consists of:

(A) 20 pages or less, the document shall be submitted electronically via a facsimile or as a PDF attachment to an email, until such time that an electronic attachment of the document to the application becomes available from SIRCON or NIPR; or

(B) more than 20 pages, the document must be submitted as a hard copy via regular mail, until such time that an electronic attachment of the document to the application becomes available from SIRCON or NIPR.

(2) Attestation. Submission of an electronic application or other form under this Rule constitutes the applicant's or submitter's attestation under penalties of perjury that the information contained in the application or form is true and correct.

(3) Any submission subject to this rule that does not comply with this rule may be rejected as incomplete and returned to the submitter without being processed, with any paid fees forfeited to the State.

R590-244-5. Requirement of an Active License to Sell, Solicit, or Negotiate Insurance.

(1) A person must have the following to sell, solicit, or negotiate insurance:

(a) an active license matching the type and line of insurance being sold, solicited, or negotiated; and

(b) an appointment from an insurer or a designation from an agency.

(2) A licensee whose license is inactivated for any reason shall not sell, solicit, or negotiate insurance from the date the active license is inactivated until the date the inactive license is reactivated.

R590-244-6. New License Application.

(1) A resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using SIRCON.

(2) A non-resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using either SIRCON or NIPR, except as stated in (3) below.

(3) A non-resident license application for a license type or line of authority not offered in the person's home state shall be submitted to the commissioner via facsimile or as a PDF attachment to an email using a form available through the Department's website, until such time that an electronic application becomes available from SIRCON or NIPR.

R590-244-7. Renewal and Non-renewal of an Active License.

(1) An active license shall be renewed on or before the license expiration date as shown below:

(a) A resident license renewal application shall be submitted online via SIRCON.

(b) A non-resident license renewal application shall be submitted online via SIRCON or NIPR.

(2) A new individual license shall expire on the last day of the licensee's birth month following the two-year anniversary of the license issue date, unless renewed.

(3) A renewed individual license shall expire on the last day of the licensee's birth month every two years, unless renewed.

(4) An agency license shall expire on the last day of the month every two years from the most recent license issue or renewal date, except as shown in (5) below.

(5) A bail bond agency license shall expire annually on the last day of the month from the most recent license issue or renewal date.

(6) Renewal Notice.

(a) Prior to the license expiration date, the commissioner shall send a renewal notice to the licensee's mailing address or email address as shown on the records of the Department.

(b) A licensee who fails to properly submit an address change to the commissioner may not receive a renewal notice and may be subject to administrative penalties.

(7) A license shall non-renew effective the license expiration date if it is not renewed on or before the expiration date, and:

(a) the non-renewed license shall be inactivated;

(b) all agency designations and insurer appointments shall be terminated; and

(c) a lapse license notice will be sent to the affected agencies and insurers.

(8) An active licensee who fails to renew a license shall not engage in the business of insurance during the period of time from the expiration date of the license until the date the inactive license is reinstated or a new license is issued.

R590-244-8. Reinstatement of Inactive License.

(1) An inactive license that has been inactive for a period of one year or less following the license expiration date can be reinstated as stated in (3) through (7) below.

(2) An inactive license that has not been reinstated within one year following its expiration date shall not be reinstated and the inactive licensee shall apply as a new license applicant.

(3) A reinstatement applicant shall:

(a) comply with all requirements for renewal of a license, including any applicable continuing education requirements if the reinstatement applicant is an individual; and

(b) pay a reinstatement fee as shown in R590-102.

(4) A resident license application for reinstatement of an inactive license shall be submitted using SIRCON, except as shown in (6) below.

(5) A non-resident license application for reinstatement of an inactive license shall be submitted using either SIRCON or NIPR, except as stated in (6) below.

(6) The following license applications for reinstatement of an inactive license must be submitted to the department via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic application becomes available from SIRCON or NIPR:

(a) a resident or non-resident license application for a person whose license has been voluntarily surrendered; and

(b) a non-resident license application for a person whose license has been inactivated for failure to maintain an active license in the person's home state.

(7) A license that has been voluntarily surrendered:

(a) may be reinstated:

(i) during the license period in which the license was surrendered; and

(ii) no later than one year from the date the license was surrendered; and

(b) must comply with the reinstatement requirements stated in (3) above, except that no continuing education requirement will apply for an individual license applicant because the reinstatement is within the current license period.

(8) A reinstated license shall expire on the same date it would have expired had the license not become inactive.

(9) A person with a reinstated license must complete any required new contracts and appointments with insurers or new agency designations before the reinstated licensee can resume doing business.

R590-244-9. Appointments and Termination of Appointments by Insurers.

(1) Initial Appointments.

(a) An insurer shall electronically appoint an individual or agency licensee with whom the insurer has a contract.

(b) Appointments are continuous until terminated by the insurer or canceled by the department.

(c) It is not necessary for an insurer to appoint an individual who is listed as a designee on an appointed agency's license.

(d) To appoint a person, an insurer shall:

(i) identify the date the appointment is to be effective; and

(ii) submit the electronic appointment to the commissioner no later than 15 days after the identified effective date of appointment or receipt of the first insurance application, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the appointment to the commissioner via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic appointment becomes available from SIRCON or NIPR.

(2) Termination of Appointment.

(a) An insurer shall electronically terminate the appointment of any previously appointed individual or agency no longer authorized to conduct business on behalf of the insurer in this state.

(b) To terminate a person's appointment an insurer shall:

(i) identify the date the termination of appointment is to be effective; and

(ii) submit the termination of appointment to the department no later than 30 days after the identified effective date of termination, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the termination of appointment as a facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic termination of appointment becomes available from SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual or agency licensee's appointment, an insurer that terminates an individual or agency licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the insurer must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-10. Designations and Termination of Designations by Agencies. (1) Designations.

(a) An agency shall electronically designate a licensed individual to the agency license to do business on behalf of the agency in this state.

(b) Designations are continuous until terminated by the agency or canceled by the department.

(c) To designate an individual on its license, an agency shall:

(i) identify the date the designation is to be effective; and

(ii) submit the designation to the commissioner no later than 15 days after the identified effective date of designation using SIRCON or NIPR.

(2) Termination of designations.

(a) An agency shall electronically terminate the designation of any previously designated individual no longer authorized to conduct business on behalf of the agency in this state.

(b) To terminate an individual's designation an agency shall:

(i) identify the date the termination of designation is to be effective; and

(ii) submit the termination of designation to the department no later than 30 days after the identified effective date of termination using SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual licensee's designation, an agency that terminates an individual licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the agency must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-11. Miscellaneous License Amendments and Changes to an Agency's Employer Identification Number (EIN).

(1) All miscellaneous license amendments shall be submitted electronically.

(2) The following four miscellaneous license amendments shall be submitted via SIRCON or NIPR:

(a) a change of residence, business, or mailing address within the same state;

(b) a change of email address;

(c) a change of telephone number; or

(d) a change of an individual licensee's name.

(3) The following six miscellaneous license amendments shall be submitted electronically via facsimile, email, or as a PDF attachment to an email:

(a) a voluntary surrender of a license or line or authority;

(b) a clearance letter request;

(c) a change of residence, business, or mailing address from one state to another state;

(d) a change of an agency name;

(e) a change of position or title of an owner, partner, officer, or director of an agency; or

(f) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency.

(4) A miscellaneous license amendment submitted in accordance with R590-244-11(3) shall contain:

(a) the name and title of the individual submitting the amendment;

(b) the relationship to the licensee of the individual submitting the amendment; and

(c) the following attestation made by the individual submitting the amendment: "I hereby attest that all of the information submitted is true and correct, and that I am the individual licensee for whom the requested change is being submitted, or an authorized responsible representative of the individual or agency licensee for whom the requested change is being submitted."

(5) A change of Employer Identification Number (EIN):

(a) cannot be processed as a miscellaneous license amendment; and

(b) the entity must apply as a new license applicant.

R590-244-12. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-244-13. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-244-14. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance licensing requirements
Date of Enactment or Last Substantive Amendment: 2009
Authorizing, and Implemented or Interpreted Law: 31A-2-201, 31A-23a-104, 31A-23a-110, 31A-23a-111, 31A-23a-115, 31A-23a-302, 31A-25-201, 31A-25-208, 31A-26-202, 31A-26-210, 31A-26-213, 31A-35-104, 31A-35-301, 31A-35-401, 31A-35-406

Insurance, Administration
R590-247
Universal Individual Health Insurance Application Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32640
FILED: 04/30/2009, 17:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed as a result of the enactment of H.B. 133 during the 2008 Session. The bill requires insurers to use a uniform health insurance application beginning July 1, 2009. It also incorporates requirements from H.B. 178 which requires producer compensation disclosure. (DAR NOTE: H.B. 133 (2008) is found at Chapter 383, Laws of Utah 2008, and was effective 05/05/2008. H.B. 178 (2009) is found at Chapter 274, Laws of Utah 2009, and was effective 03/25/2009.)

SUMMARY OF THE RULE OR CHANGE: The scope of the rule has been expanded to include both a small employer group application and an individual application. The use of the applications is now mandatory rather than voluntary effective July 1, 2009. The rule allows for the applications to be revised in certain circumstances. The individual application has a producer compensation disclosure section as required by Subsection 31A-23a-501(4).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-22-635 and 31A-30-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Health insurers will be required to file the universal applications with the department, however, this can be handled with existing personnel through the normal course of business.

❖ LOCAL GOVERNMENTS: This rule deals with the relationship between the department and its health insurance licensees. It will not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small business, like insurance agencies, will not be affected financially by the changes to this rule, only insurers, which are large employers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Insurers will have to discard and discontinue their old insurance application forms for the new ones and file the new forms with the department. Insurers have been aware since last year, of this pending change. Insurance applicants will now only have to complete one application to shop multiple insurance companies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be minor expense for the disposal of old forms and reprinting of new ones. D. Kent Michie, Commissioner

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/01/2009 at 9:00 AM, State Office Building (behind the Capitol), 450 N State St, Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-247. Universal [~~Individual~~]Health Insurance Application Rule.
R590-247-1. Authority.

This rule is promulgated pursuant to [~~Subsection~~]Subsections 31A-22-635 and 31A-30-102 which direct[~~directs~~] the commissioner[~~Insurance Department~~] to create a universal [~~individual~~]health insurance application.

R590-247-2. Purpose and Scope.

(1) The purpose of this rule is to establish [~~a~~]universal applications[~~individual application~~] for all insurers offering a health benefit plan[~~accident and health insurance insurers doing business~~] in Utah.

(2) This rule applies to all insurers offering an individual or small employer health benefit plan[~~accident and health insurers doing business~~] in Utah.

R590-247-3. General Instructions.

(1) Use of the Utah [~~Universal~~]Individual Health Insurance Application and the Utah Small Employer Health Insurance Application by insurers or by health insurance producers is mandatory[~~voluntary~~].

(2) The Utah [~~Universal~~]Individual Health Insurance Application and Utah Small Employer Health Insurance Application must[~~will~~] be used without insurer identifying logos or addresses to facilitate multiple insurer submissions using a single application.

(3) The Utah [~~Universal~~]Individual Health Insurance Application and Utah Small Employer Health Insurance Application can be downloaded from the Department's website at [~~(~~]www.insurance.utah.gov[~~)~~].

(4) The Utah [~~Universal~~]Individual Health Insurance Application and Utah Small Employer Health Insurance Application may [~~not~~]be altered for:

(a) purposes of electronic application and submission, including electronic signature disclaimers;

(b) languages other than English; and

(c) reasons specifically approved by the commissioner.

(5) The use of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application does not limit the ability of an insurer to obtain additional information for underwriting purposes.

(6) Section L, Producer Agreement and Compensation Disclosure section on the Utah Individual Health Insurance Application must include all information to be disclosed as required by Section 31A-23a-501.

(7)(a) Except as provided in R590-247-3(7)(b), question number 40 on the Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application may not be used for purposes of Sections 31A-8-402.3, 31A-8-402.5, 31A-21-105, 31A-22-721, 31A-30-107, 31A-30-107.1, or R590-247-3(5), unless the information was disclosed or should have been disclosed in another question on the application.

(8)(a) Starting July 1, 2009, insurers shall accept the Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application.

(b) An insurer may accept an application other than the Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application until December 31, 2009.

(9) No later than July 1, 2010, all insurers shall offer compatible systems for electronic submission of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application.

R590-247-4. Penalties.

A person found[~~, after a hearing or other regulatory process,~~] to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590[~~R547~~]-247-5. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-247-[~~5~~]6. Severability.

If any provision of this rule or its application to any person or situation[~~circumstance~~] is[~~, for any reason,~~] held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.[~~the remainder of this rule and its application to other persons and circumstances are not affected.~~]

KEY: universal [~~individual~~]health insurance application
Date of Enactment or Last Substantive Amendment: [~~June 30, 2008~~]2009
Authorizing, and Implemented or Interpreted Law: [~~31A-2-308; ~~]31A-30-102

♦ ♦

Insurance, Title and Escrow Commission

R592-6

Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 32545
FILED: 04/23/2009, 13:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed due to failure to comply with Subsection 31A-2-404(3) requiring the Title and Escrow Commission to provide the Real Estate Commission with the same proposed rule filing form and rule text as is provided to the Division of Administrative Rules. At the same time as this repeal filing is being made, a new rule filing is being processed and provided to the Real Estate Commission as required by law. (DAR NOTE: The proposed new Rule R592-6 is under DAR No. 32548 in this issue, May 15, 2009, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: It has been determined that the process of filing this rule for the rulemaking process violated the code. As a result, this rule is being repealed then re-filed and provided to the Real Estate Commission as required by Subsection 31A-2-404(3).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-404

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the department since it is being put back into effect at the same time, resulting in no lapse or change in rule content.

❖ LOCAL GOVERNMENTS: The repeal of this rule will not affect local governments since the rule deals solely with the relationship between the Commission and the title industry.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The repeal of this rule will have no fiscal impact on small businesses since it is being put back into effect at the same time resulting in no lapse or change in rule content.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have no fiscal impact on individuals, associations, entities, etc., since it will be put back into effect at the same time resulting in no lapse or change in rule content.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: At the same time this rule is being repealed another filing is being made to put it back into effect. Both filings will be put into effect on the same day resulting in no lapse or change in rule content. Canyon Walker Anderson, Title and Escrow Commission Chair

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

INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.

~~[R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.~~

~~R592-6-1. Authority.~~

~~This rule is promulgated pursuant to Section 31A-2-404(2), which authorizes the Title and Escrow Commission (Commission) to make rules for the administration of the Insurance Code related to title insurance, including rule related to standards of conduct for a title insurer, agency or producer.~~

~~R592-6-2. Purpose and Scope.~~

~~(1) The purpose of this rule is to identify certain practices, which the Commission finds creates unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition. These practices include the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title insurer, agency or producer.~~

~~(2) This rule applies to all title insurers, title insurance agencies, title insurance producers and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.~~

~~R592-6-3. Definitions.~~

~~For the purpose of this rule the Commission adopts the definitions as set forth in Section 31A-1-301 and 31A-2-402, and the following:~~

~~(1) "Bona fide real estate transaction" means:~~

~~(a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or~~

~~(b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.~~

~~(2) "Business Activities" shall include sporting events, sporting activities, musical and art events. In no case shall such business activities rise to the level of ceremonies, for example, award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.~~

~~(3) "Business meals" shall include breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals raise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.~~

~~(4)(a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:~~

~~(i) buying or selling interests in real property; and~~

~~(ii) making loans secured by interests in real property.~~

~~(b) "Client" includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing.~~

~~(5) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.~~

~~(6) "Official trade association publication" means:~~

~~(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or~~

~~(b) an annual, semiannual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.~~

~~(7) "Title insurance business" means the business of title insurance and the conducting of escrow.~~

~~(8) "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.~~

~~R592-6-4. Unfair Methods of Competition, Acts and Practices.~~

~~In addition to the acts prohibited under Section 31A-23a-402, the Commission finds that providing or offering to provide any of the following benefits by parties identified in Section R592-6-2 to any client, either directly or indirectly, except as specifically allowed in Section R592-6-5 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.~~

~~(1) The furnishing of a title insurance commitment without one of the following:~~

~~(a) sufficient evidence in the file of the title insurer, agency or producer that a bona fide real estate transaction exists; or~~

~~(b) payment in full at the time the title insurance commitment is provided.~~

~~(2) The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless~~

that commitment discloses a defect which gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Section 31A-19a-209(5); or

(b) the filing of charges for escrow services with the Utah Insurance Commissioner (commissioner), which are less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services which are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) The paying for, furnishing, or waiving all or any part of the rental or lease charge for space which is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title insurer's, title agency's, or title producer's facilities, for example, conference rooms or meeting rooms, to a client or its trade association without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) The co-habitation or sharing of office space with a client of a title insurer, title agency, or title producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title insurer, agency or producer, for example, secretary, clerk, messenger or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company subject to 31A-2-405 and R592-5.

(14) Paying for the fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, whose services are required by any client to structure or complete a particular transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity of a client, except as allowed under Subsection R592-6-5(6). Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R592-6-5(2) or otherwise providing things of value for promotional activities of a client. Title insurers, agencies or producers may attend activities of a client if there is no additional cost to the title insurer, agency or producer other than their own entry fees, registration fees, meals, and provided that these fees are no greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as providing a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

(a) building plans;

(b) construction critical path timelines;

(c) "For Sale by Owner" lists;

(d) surveys;

(e) appraisals;

(f) credit reports;

(g) mortgage leads for loans;

(h) rental or apartment lists; or

(i) printed labels.

(19) Newsletters cannot be property specific or cannot highlight specific customers.

(20) A title insurer, agency or producer cannot provide a client access to any software accounts that are utilized to access real property information that the insurer, agency or producer pays for, develops, or pays to maintain. Closing software is exempt as long as it is used for a specific closing.

(21) A person, as defined in 31A-1-301, or individual affiliated with a title insurer, agency or producer cannot provide a loan or any type of financing to a client of title insurance.

(22) Paying for any advertising on behalf of a client.

(23) Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurer, agency or producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title insurer, agency or producer.

(24) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client.

(25) A donation may not be made to a charitable organization created, controlled or managed by a client.

(26) A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement under Section 31A-23a-402(8).

(27) Title insurers, agencies and producers who have ownership in, or control of, other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies, may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

R592-6-5. Permitted Advertising, Business Entertainment, and Methods of Competition.

Except as specifically prohibited in Section R592-6-4 above, the following are permitted:

(1) In addition to complying with the provisions of 31A-23a-402 and R590-130, Rules Governing Advertisements of Insurance, advertisement by title insurers, agencies or producers must comply with the following:

(a) the advertisement must be purely self-promotional; and

(b) advertisement in official trade association publications are permissible as long as any title insurer, agency or producer has an equal

~~opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.~~

~~(2) A title insurer, agency or producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.~~

~~(3) A title insurer, agency or producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title insurer, agency or producer may not expend more than $15 per guest per open house. The open house may take place on or off the title insurer's, agency's or producer's premises but may not take place on a client's premises.~~

~~(4) A donation to a charitable organization must:~~

~~(a) not be paid in cash;~~

~~(b) if paid by a negotiable instrument, be made payable only to the charitable organization;~~

~~(c) be distributed directly to the charitable organization; and~~

~~(d) not provide any benefit to a client.~~

~~(5) A title insurer, agency or producer may distribute self-promotional items having a value of $5 or less to clients, consumers and members of the general public. These self-promotional items shall be novelty gifts which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.~~

~~(6) A title insurer, agency or producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:~~

~~(a) the person representing the title insurer, agency or producer must be present during the business meal or business activity;~~

~~(b) there is a substantial title insurance business discussion directly before, during or after the business meal or business activity;~~

~~(c) the total cost of the business meal, the business activity, or both is not more than $100 per person, per day;~~

~~(d) no more than three individuals from an office of a client may be provided a business meal or business activity by a title insurer, agency or producer in a single day; and~~

~~(e) the entire business meal or business activity may take place on or off the title insurer's, agency's or producer's premises, but may not take place on a client's premises.~~

~~(7) A title insurer, agency or producer may conduct continuing education programs that are approved by the appropriate regulatory agency, under the following conditions:~~

~~(a) the continuing education program shall address only title insurance, escrow or other topics directly related thereto;~~

~~(b) the continuing education program must be of at least one hour in duration;~~

~~(c) for each hour of continuing education, $15 or less per person may be expended, including the cost of meals and refreshments; and~~

~~(d) no more than one such continuing education program may be conducted at the office of a client per calendar quarter.~~

~~(8) A title insurer, agency or producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of the client's immediate family with flowers or gifts not to exceed $75.~~

~~(9) Any other advertising, business entertainment, or method of competition must be requested in writing and approved in advance and in writing by the Commission.~~

~~**R592-6-6. Enforcement Date.**~~

~~The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.~~

~~**R592-6-7. Severability.**~~

~~If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~

~~**KEY: title insurance**~~
~~**Date of Enactment or Last Substantive Amendment: November 10, 2008**~~
~~**Notice of Continuation: November 9, 2007**~~
~~**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402]**~~

♦ ♦

Insurance, Title and Escrow Commission

R592-6

Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 32548
FILED: 04/23/2009, 15:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being proposed for several reasons: 1) to update the rule to keep up with changes in the title and escrow marketplace; 2) to make technical changes; and 3) to replace the repealed rule. (DAR NOTES: The proposed repeal of Rule R592-6 is under DAR No. 32545 in this issue, May 15, 2009, of the Bulletin. This rule had originally appeared at Rule R590-153 and was renumbered to R592-6 under DAR No. 31715, effective 11/10/2008. The purpose and summary reflect this.)

SUMMARY OF THE RULE OR CHANGE: The Authority Section provides reference to the Title and Escrow Commission's authority to write the rule; the Purpose and Scope Sections have been combined; the Definition Section has been put in alphabetical order, and new definitions included; several subsections in Sections R592-6-3 and R592-6-4 have been moved without change to the text; Subsection R592-6-4(20) adds the words, "develops, or pays to maintain," to the end of the first sentence; Subsection R592-6-4(21) references the code for the definition of "person;" Subsection R592-6-4(27) includes escrow companies as an I.R.C. qualified intermediary; Subsection R592-6-5(7) states that only those

continuing education classes that are approved by the "appropriate regulatory agency" may be conducted; Subsection R590-153-5(P), has been deleted since it is no longer an issue; Subsection R590-153-5(R), dealing with information packets, has been deleted since they are no longer collected by the department nor charged for by the industry due to new technology; Subsection R592-6-5(7) is being changed to clarify that the education programs referred to are continuing education programs; and references to "commissioner" are being changed to "Commission" to comply with the transfer of this rule from the Insurance Department to the Title and Escrow Commission. Other technical and grammatical changes are also being made.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-404

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The amendments will have no fiscal impact on the Insurance Department or the state's budget. The amendments will not result in additional or reduced fees to the department, nor will they change the workload of department staff.

❖ LOCAL GOVERNMENTS: Since this rule deals solely with the relationship between the department and their licensees, it will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule will have no fiscal impact on consumers or licensees. The majority of the changes deal with the moving of subsections within the rule, change in outlining, rule references, and the deletion of subsections that are no longer an issue in the title business. Since the changes should have no fiscal impact on the title business, there should be no fiscal impact on their consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will have no fiscal impact on consumers or licensees. The majority of the changes deal with the moving of subsections within the rule, change in outlining and rule references, and the deletion of subsections that are no longer an issue in the title business. Since the changes should have no fiscal impact on the title business, there should be no fiscal impact on their consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have no fiscal impact on businesses. Canyon Walker Anderson, Title and Escrow Commission Chair

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

INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.
R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
R592-6-1. Authority.

This rule is promulgated pursuant to Section 31A-2-404(2), which authorizes the Title and Escrow Commission (Commission) to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency or producer.

R592-6-2. Purpose and Scope.

(1) The purpose of this rule is to identify certain practices, which the Commission finds creates unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition. These practices include the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title insurer, agency or producer.

(2) This rule applies to all title insurers, title insurance agencies, title insurance producers and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R592-6-3. Definitions.

For the purpose of this rule the Commission adopts the definitions as set forth in Section 31A-1-301 and 31A-2-402, and the following:

(1) "Bona fide real estate transaction" means:

(a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or

(b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

(2) "Business Activities" shall include sporting events, sporting activities, musical and art events. In no case shall such business activities rise to the level of ceremonies, for example, award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.

(3) "Business meals" shall include breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals raise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.

(4)(a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:

(i) buying or selling interests in real property; and

(ii) making loans secured by interests in real property.

(b) "Client" includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing.

(5) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

(6) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

(7) "Title insurance business" means the business of title insurance and the conducting of escrow.

(8) "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

R592-6-4. Unfair Methods of Competition, Acts and Practices.

In addition to the acts prohibited under Section 31A-23a-402, the Commission finds that providing or offering to provide any of the following benefits by parties identified in Section R592-6-2 to any client, either directly or indirectly, except as specifically allowed in Section R592-6-5 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.

(1) The furnishing of a title insurance commitment without one of the following:

(a) sufficient evidence in the file of the title insurer, agency or producer that a bona fide real estate transaction exists; or

(b) payment in full at the time the title insurance commitment is provided.

(2) The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Section 31A-19a-209(5); or

(b) the filing of charges for escrow services with the Utah Insurance Commissioner (commissioner), which are less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services which are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) The paying for, furnishing, or waiving all or any part of the rental or lease charge for space which is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title insurer's, title agency's, or title producer's facilities, for example, conference rooms or meeting rooms, to a client or its trade association without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) The co-habitation or sharing of office space with a client of a title insurer, title agency, or title producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title insurer, agency or producer, for example, secretary, clerk, messenger or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company subject to 31A-2-405 and R592-5.

(14) Paying for the fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, whose services are required by any client to structure or complete a particular transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity of a client, except as allowed under Subsection R592-6-5(6). Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R592-6-5(2) or otherwise providing things of value for promotional activities of a client. Title insurers, agencies or producers may attend activities of a client if there is no additional cost to the title insurer, agency or producer other than their own entry fees, registration fees, meals, and provided that these fees are no greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as providing a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

(a) building plans;

(b) construction critical path timelines;

(c) "For Sale by Owner" lists;

(d) surveys;

(e) appraisals;

(f) credit reports;

(g) mortgage leads for loans;

(h) rental or apartment lists; or

(i) printed labels.

(19) Newsletters cannot be property specific or cannot highlight specific customers.

(20) A title insurer, agency or producer cannot provide a client access to any software accounts that are utilized to access real property information that the insurer, agency or producer pays for, develops, or pays to maintain. Closing software is exempt as long as it is used for a specific closing.

(21) A person, as defined in 31A-1-301, or individual affiliated with a title insurer, agency or producer cannot provide a loan or any type of financing to a client of title insurance.

(22) Paying for any advertising on behalf of a client.

(23) Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a

subdivision or units in a condominium project. A title insurer, agency or producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title insurer, agency or producer.

(24) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client.

(25) A donation may not be made to a charitable organization created, controlled or managed by a client.

(26) A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement under Section 31A-23a-402(8).

(27) Title insurers, agencies and producers who have ownership in, or control of, other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies, may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

R592-6-5. Permitted Advertising, Business Entertainment, and Methods of Competition.

Except as specifically prohibited in Section R592-6-4 above, the following are permitted:

(1) In addition to complying with the provisions of 31A-23a-402 and R590-130, Rules Governing Advertisements of Insurance, advertisement by title insurers, agencies or producers must comply with the following:

(a) the advertisement must be purely self-promotional; and

(b) advertisement in official trade association publications are permissible as long as any title insurer, agency or producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

(2) A title insurer, agency or producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

(3) A title insurer, agency or producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title insurer, agency or producer may not expend more than $15 per guest per open house. The open house may take place on or off the title insurer's, agency's or producer's premises but may not take place on a client's premises.

(4) A donation to a charitable organization must:

(a) not be paid in cash;

(b) if paid by a negotiable instrument, be made payable only to the charitable organization;

(c) be distributed directly to the charitable organization; and

(d) not provide any benefit to a client.

(5) A title insurer, agency or producer may distribute self-promotional items having a value of $5 or less to clients, consumers and members of the general public. These self-promotional items shall be novelty gifts which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.

(6) A title insurer, agency or producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:

(a) the person representing the title insurer, agency or producer must be present during the business meal or business activity;

(b) there is a substantial title insurance business discussion directly before, during or after the business meal or business activity;

(c) the total cost of the business meal, the business activity, or both is not more than $100 per person, per day;

(d) no more than three individuals from an office of a client may be provided a business meal or business activity by a title insurer, agency or producer in a single day; and

(e) the entire business meal or business activity may take place on or off the title insurer's, agency's or producer's premises, but may not take place on a client's premises.

(7) A title insurer, agency or producer may conduct continuing education programs that are approved by the appropriate regulatory agency, under the following conditions:

(a) the continuing education program shall address only title insurance, escrow or other topics directly related thereto;

(b) the continuing education program must be of at least one hour in duration;

(c) for each hour of continuing education, $15 or less per person may be expended, including the cost of meals and refreshments; and

(d) no more than one such continuing education program may be conducted at the office of a client per calendar quarter.

(8) A title insurer, agency or producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of the client's immediate family with flowers or gifts not to exceed $75.

(9) Any other advertising, business entertainment, or method of competition must be requested in writing and approved in advance and in writing by the Commission.

R592-6-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R592-6-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance
Date of Enactment or Last Substantive Amendment: 2009
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402

♦ ♦

Insurance, Title and Escrow Commission

R592-7

Title Insurance Continuing Education Program

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 32543
FILED: 04/23/2009, 12:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed due to failure to comply with Subsection 31A-2-404(3) requiring the Title and Escrow Commission to provide the Real Estate Commission with the same proposed rule filing form and rule text as is provided to the Division of Administrative Rules. At the same time as this repeal filing is being made, a new rule filing is being processed and provided to the Real Estate Commission as required by law. (DAR NOTE: The proposed new Rule R592-7 is under DAR No. 32525 and was published in the May 1, 2009, issue of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: It has been determined that the process of filing this rule for the rulemaking process violated the code. As a result, this rule is being repealed then re-filed and provided to the Real Estate Commission as required by Subsection 31A-2-404(3).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 31A-2-404(2)(a) and (g)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the department since it is being put back into effect at the same time, resulting in no lapse or change in rule content.

❖ LOCAL GOVERNMENTS: The repeal of this rule will not affect local governments since the rule deals solely with the relationship between the Commission and the title industry.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The repeal of this rule will have no fiscal impact on small businesses since it is being put back into effect at the same time resulting in no lapse or change in rule content.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have no fiscal impact on individuals, associations, entities, etc., since it will be put back into effect at the same time resulting in no lapse or change in rule content.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: At the same time this rule is being repealed another filing is being made to put it back into effect. Both filings will be put into effect on the same day resulting in no lapse or change in rule content. Canyon Walker Anderson, Title and Escrow Commission Chair

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

INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.
~~[R592-7. Title Insurance Continuing Education Program.~~
~~R592-7-1. Authority.~~

~~This rule is promulgated pursuant to Subsections 31A-2-404(2)(a) and (g), which direct the Title and Escrow Commission to make rules for the administration of the provisions in this title related to title insurance and the approval of continuing education programs related to title insurance.~~

~~R592-7-2. Purpose and Scope.~~

~~(1) The purposes of this rule are to:~~

~~(a) delegate authority from the Commission to the commissioner to provisionally approve continuing education programs related to title insurance; and~~

~~(b) establish procedures for the Commission to approve continuing education programs related to title insurance provisionally approved by the commissioner.~~

~~(2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing business as a title licensee, and continuing education providers submitting continuing education programs related to title insurance for approval pursuant to 31A-2-404.~~

~~R592-7-3. Definitions.~~

~~"Title licensee" has the same meaning as found in Section 31A-2-402(3).~~

~~R592-7-4. Program Approval.~~

~~(1) The Commission hereby delegates to the commissioner provisional authority to approve continuing education programs related to title insurance including:~~

~~(a) continuing education course providers; and~~

~~(b) continuing education courses.~~

~~(2) The commissioner will report to the Commission on all continuing education programs related to title insurance provisionally approved by the commissioner. This report will include approved:~~

~~(a) continuing education course providers; and~~

~~(b) continuing education courses added to the Department's list of approved continuing education courses.~~

~~(3) The Commission will review the report and~~

~~(a) concur with and thus approve the continuing education course providers and continuing education courses provisionally approved by the commissioner; or~~

~~(b) disapprove the provisionally approved continuing education course providers or continuing education courses.~~

~~(4) If the Commission disapproves a provisionally approved continuing education provider or continuing education course, the commissioner will:~~
~~(a) remove the provider or the course from the Department's approved provider or course list; and~~
~~(b) notify the provider of the disapproval.~~

~~R592-7-5. Program Submission.~~
~~(1) Title insurance related continuing education providers shall submit initial and renewal provider approval information to the commissioner in accordance with 31A-23a-202 and R590-142.~~
~~(2) Approved title insurance related continuing education providers shall submit requests for continuing education course approval to the commissioner in accordance with 31A-23a-202 and R590-142.~~

~~R592-7-6. Penalties.~~
~~A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.~~

~~R592-7-7. Enforcement Date.~~
~~The commissioner will begin enforcing this rule upon the rule's effective date.~~

~~R592-7-8. Severability.~~
~~If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.~~

~~KEY: title insurance continuing education~~
~~Date of Enactment or Last Substantive Amendment: July 14, 2008~~
~~Authorizing, and Implemented or Interpreted Law: 31A-2-308; 31A-2-402; 31A-2-404; 31A-23a-202~~]

♦ ♦

Insurance, Title and Escrow Commission

R592-8

Application Process for an Attorney Exemption for Title Agency Licensing

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 32546
FILED: 04/23/2009, 13:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed due to failure to comply with Subsection 31A-2-404(3) requiring the Title and Escrow Commission to provide the Real Estate Commission with the same proposed rule filing form and rule text as is provided to the Division of Administrative Rules. At the same time as this repeal filing is being made, a new rule filing is being processed and provided to the Real Estate Commission as required by law. (DAR NOTE: The proposed new Rule R592-8 is under DAR No. 32526 and was published in the May 1, 2009, issue of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: It has been determined that the process of filing this rule for the rulemaking process violated the code. As a result, this rule is being repealed then re-filed and provided to the Real Estate Commission as required by Subsection 31A-2-404(3).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-404, 31A-23a-204, 31A-1-301, 31A-2-308, 31A-2-402, and 31A-23a-102

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the department since it is being put back into effect at the same time, resulting in no lapse or change in rule content.
❖ LOCAL GOVERNMENTS: The repeal of this rule will not affect local governments since the rule deals solely with the relationship between the Commission and the title industry.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The repeal of this rule will have no fiscal impact on small businesses since it is being put back into effect at the same time resulting in no lapse or change in rule content.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have no fiscal impact on individuals, associations, entities, etc., since it will be put back into effect at the same time resulting in no lapse or change in rule content.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: At the same time this rule is being repealed another filing is being made to put it back into effect. Both filings will be put into effect on the same day resulting in no lapse or change in rule content. Canyon Walker Anderson, Title and Escrow Commission Chair

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.

[R592-8. Application Process for an Attorney Exemption for Title Agency Licensing.

R592-8-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404 which authorizes the Commission to make rules for the administration of the provisions in this title related to title insurance and Section 31A-23a-204 which authorizes the Commission to make a rule to exempt attorneys with real estate experience from the three year licensing requirement to license a title agency.

R592-8-2. Purpose and Scope.

(1) The purposes of this rule are:

(a) to delegate to the Commissioner preliminary approval or denial of a request for exemption;

(b) to provide a description of the types of real estate experience that could be used by an attorney seeking to qualify for the exemption;

(c) to provide a process to apply for a request for exemption; and

(d) to provide a process to appeal a denial of a request for exemption.

(2) This rule applies to all attorneys seeking an exemption under the provisions of 31A-23a-204.

R592-8-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402 and 31A-23a-102, the following definitions shall apply for the purposes of this rule:

(1) "Attorney" means a person licensed and in good standing with the Utah State Bar.

(2) "Real estate experience" includes:

(a) law firm transactional experience consisting of any or all of the following:

(i) real estate transactions, including drafting documents, reviewing and negotiating contracts of sale, including real estate purchase contracts (REPC), commercial transactions, residential transactions;

(ii) financing and securing construction and permanent financing;

(iii) title review, due diligence, consulting and negotiations with title companies, researching and drafting opinions of title, coordinating with title companies, pre-closing;

(iv) zoning, development, construction, homeowners associations, subdivisions, condominiums, planned unit developments;

(v) conducting closings; and

(vi) estate planning and probate-related transactions and conveyances.

(b) law firm litigation experience consisting of any or all of the following:

(i) foreclosures;

(A) judicial and non-judicial;

(B) homeowner association (HOA) lien foreclosure;

(ii) either side of homeowner vs HOA litigation;

(iii) state construction registry litigation - mechanics lien filing and litigation;

(iv) real estate disputes or litigation involving:

(A) a real estate contract;

(B) a boundary line;

(C) a rights of way and/or easement;

(D) a zoning issue;

(E) a property tax issue;

(F) a title issue or claim;

(G) a landlord/tenant issue; and

(F) an estate and/or probate litigation involving real property assets, claims, and disputes.

(c) non-law firm experience consisting of any or all of the following:

(i) real estate agent, broker, developer, investor;

(ii) mortgage broker;

(iii) general contractor;

(iv) professor or instructor teaching real estate licensing, real estate contracts, or real estate law;

(v) lender involved with any or all of the following real estate lending activities:

(A) lending;

(B) escrow; or

(C) foreclosure;

(vi) private lender;

(vii) in-house counsel involved in real estate transactions for bank, mortgage lender, credit union, title company, or title agency;

(viii) employment with or counsel to a government agency involved in regulation of real estate, such as HUD, FHA, zoning, tax assessor, county recorder, insurance department, and Federal or state legislatures;

(ix) escrow officer;

(x) title searcher; or

(xi) surveyor; and

(d) other experience with real estate not included in (a), (b), and (c) above.

R592-8-4. Delegation of Authority.

The Commission hereby grants its preliminary concurrence to the approval or denial of a request for exemption requested by an attorney pursuant to 31A-23a-204 to the Utah Insurance Commissioner.

R592-8-5. Request for Exemption Process.

(1) An individual title licensee, who is an attorney as defined in this rule desiring to obtain an agency license under the exemption provided in 31A-23A-204(1)(c), shall make a request for exemption to the Commissioner in accordance with the requirements of this subsection.

(2) The applicant will submit a letter addressed to the Commission:

(a) requesting exemption from the licensing time period requirements in 31A-23a-204(1)(a)(i); and

(b) providing the following information:

(i) the applicant's name, mailing address and email, telephone number, and title license number;

(ii) a description of the applicant's real estate experience; and

(iii) why the applicant feels that experience qualifies the applicant for the exemption.

(3) The Commissioner will review the request for exemption within five business days of its receipt and

(a) request additional information from the applicant;

(b) preliminarily approve the request for exemption; or

(c) preliminarily disapprove the request for exemption.

(4) The Commissioner will report monthly to the Commission all preliminarily approved or denied requests for exemption received and reviewed since the previous Commission meeting.

~~(5) The Commission will concur or non-concur with the Commissioner's preliminary approval or denial of a request for exemption.~~

~~(6) If the Commissioner's preliminary denial of a request for exemption is concurred with by the Commission, the Commissioner will:~~

~~(a) notify the applicant of the denial; and~~

~~(b) inform the applicant of his right to agency review pursuant to R590-160.~~

~~(7) If the Commissioner's preliminary approval of a request for exemption is concurred with by the Commission, the Commissioner will expeditiously notify the applicant to submit an electronic license application and pay the required fees and assessments.~~

~~**R592-8-7. Penalties.**~~

~~A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~**R592-8-8. Enforcement Date.**~~

~~The Commission will begin enforcing this rule on the rule's effective date.~~

~~**R592-8-9. Severability.**~~

~~If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.~~

~~**KEY: attorney exemption application process**~~
~~**Date of Enactment or Last Substantive Amendment: July 14, 2008**~~
~~**Authorizing, and Implemented or Interpreted Law: 31A-1-301; 31A-2-308; 31A-2-402; 31A-2-404; 31A-23a-102; 31A-23a-204]**~~

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Insurance, Title and Escrow Commission

R592-9

Title Insurance Recovery, Education, and Research Fund Assessment Rule

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 32547
FILED: 04/23/2009, 14:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed due to failure to comply with Subsection 31A-2-404(3) requiring the Title and Escrow Commission to provide the Real Estate Commission with the same proposed rule filing form and rule text as is provided to the Division of Administrative Rules. At the same time as this repeal filing is being made, a new rule filing is being processed and provided to the Real Estate Commission as required by law. (DAR NOTE: The proposed new Rule R592-9 is under DAR No. 32527 and was published in the May 1, 2009, issue of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: It has been determined that the process of filing this rule for the rulemaking process violated the code. As a result, this rule is being repealed then re-filed and provided to the Real Estate Commission as required by Subsection 31A-2-404(3).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-41-202 and 31A-2-308

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the department since it is being put back into effect at the same time, resulting in no lapse or change in rule content.

❖ LOCAL GOVERNMENTS: The repeal of this rule will not affect local governments since the rule deals solely with the relationship between the Commission and the title industry.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The repeal of this rule will have no fiscal impact on small businesses since it is being put back into effect at the same time resulting in no lapse or change in rule content.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have no fiscal impact on individuals, associations, entities, etc., since it will be put back into effect at the same time resulting in no lapse or change in rule content.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: At the same time this rule is being repealed another filing is being made to put it back into effect. Both filings will be put into effect on the same day resulting in no lapse or change in rule content. Canyon Walker Anderson, Title and Escrow Commission Chair

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

INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.

[R592-9. Title Insurance Recovery, Education, and Research Fund Assessment Rule.

R592-9-1. Authority.

This rule is promulgated pursuant to Section 31A-41-202 which requires the Title and Escrow Commission to determine the amount of required assessments from individual title insurance producers and title insurance agencies to provide funding for the recovery, education, and research fund.

R592-9-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to establish the amounts for individual title insurance producer assessments; and

(b) to establish the amounts for title insurance agency assessments.

(2) This rule applies to all individual title insurance producer applicants and licensees and all title insurance agency license applicants and licensees and any unlicensed person doing the business of title insurance.

R592-9-3. Establishing Assessment Amounts.

(1) Prior to July 1 of each year, the Commission shall establish the assessment amounts for:

(a) an initial producer license for an individual title insurance producer applicant;

(b) a renewal license for a licensed individual title insurance producer;

(c) an initial agency license for a title insurance agency applicant; and

(d) an annual assessment for a licensed title insurance agency.

(2) Annual licensed title insurance agency assessment amounts shall be established for the following four premium bands of title insurance premiums:

(a) Band A: $0 to $1 million;

(b) Band B: more than $1 million to $10 million;

(c) Band C: more than $10 million to $20 million; and

(d) Band D: more than $20 million.

(3) The individual producer and agency assessment amounts shall be adopted by motion of the Commission.

(4) The adopted assessment amounts shall be posted on the Insurance Department's web page.

R592-9-4. Individual Title Insurance Producer Assessment.

(1) Beginning July 1, 2009:

(a) A person applying for an initial individual title insurance producer license or a licensed individual title producer adding an additional title insurance line of authority shall pay an assessment not to exceed $20.00 at the time of application; and

(b) a licensee renewing an individual title insurance producer license shall pay an assessment not to exceed $20.00 at the time of application.

(2) An individual title insurance producer assessment will be paid in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-9-5. Title Insurance Agency Assessment.

(1) Beginning July 1, 2008, a person applying for an initial title insurance agency license shall pay an assessment of $1,000 at the time of application.

(2) Beginning January 1, 2009, a licensed title insurance agency shall pay an annual assessment.

(3) An agency's placement in one of the four assessment bands will be determined by an agency's title insurance written premium volume for the preceding calendar year as of December 31 of that calendar year.

(4) An agency's annual assessment will be paid in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-9-6. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-9-7. Enforcement Date.

The commissioner will begin enforcing this rule July 1, 2008.

R592-9-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title recovery fund assessment

Date of Enactment or Last Substantive Amendment: July 14, 2008

Authorizing, and Implemented or Interpreted Law: 31A-2-308; 31A-41-202]

Labor Commission, Antidiscrimination and Labor, Labor

R610-3-22

Payment of Wages Via Pay Cards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32601

FILED: 04/30/2009, 14:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to permit employers to use pay cards to pay employee wages, and to establish requirements for use of such pay cards.

SUMMARY OF THE RULE OR CHANGE: The proposed rule authorizes employers to use pay cards to pay wages, provided that the pay cards allow withdrawal of the full amount of wages for at least six months after the wages are due at no cost to the employee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-23-101 et seq., 34-28-1 et seq., 34-40-101 et seq., and 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This proposed amendment will not impose any additional implementation or regulatory costs on the Labor Commission, which is the state agency charged with enforcing Utah's wage payment laws. Regarding costs to the state in its capacity as an employer, the proposed rule permits, but does not require, use of pay cards. Consequently, the rule does not impose any cost to the state. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to the state.

❖ LOCAL GOVERNMENTS: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on local government. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on small businesses. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule does not require any employer to use pay cards, but merely permits pay cards as an alternative to existing methods of paying wages, such as payroll checks and electronic transfers. Consequently, an employer will only incur compliance costs as a result of this rule if the employer voluntarily chooses to pay wages with pay cards. Also, because the proposed rule does not permit any costs associated with use of a pay card system to be assessed to employees, there will be no compliance costs for employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission is promulgating this rule amendment at the request of employers who desire to use pay cards to pay wages. The proposal has been discussed and endorsed by the Antidiscrimination Advisory Council. Because the rule establishes an alternative method of paying wages but does not mandate use of that method, each business can evaluate its particular circumstances and determine whether use of a pay card system is advantageous, financially or otherwise, for that business. Sherrie Hayashi, Commissioner

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR, LABOR
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:
Brent Asay at the above address, by phone at 801-530-6802, by FAX at 801-530-7601, or by Internet E-mail at basay@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 06/15/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2009

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-3. Filing, Investigation, and Resolution of Wage Claims.
R610-3-22. Payment of Wages Via Pay Cards

A. An employer may pay wages by providing the employee a pay card subject to the following conditions:

1. The employee must be able to use the pay card for full payment of wages on the designated pay day or within 6 months thereafter.

2. The employee must be able to use the pay card twice in a pay period to withdraw funds without incurring a fee or charge.

KEY: wages, minors, labor, time
Date of Enactment or Last Substantive Amendment: [~~June 13, 2008~~]2009
Notice of Continuation: November 30, 2006
Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63G-4-102 et seq.

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Public Safety, Driver License
R708-14
Adjudicative Proceedings for Driver License Actions Involving Alcohol and Drugs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32587
FILED: 04/29/2009, 17:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for alcohol and/or drug adjudicative proceedings.

SUMMARY OF THE RULE OR CHANGE: In the past, hearing procedures were held in the county in which the offense occurred. To serve the public more efficiently, hearing procedures can also be held in a County which is adjacent to the county in which the offense occurred.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-216

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Does not apply, because the change made to the existing section does not affect the state budget.
❖ LOCAL GOVERNMENTS: Does not apply, because the change made to the existing rule does not affect local government.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Does not apply, because the change made to the existing rule does not affect small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The change made to the existing rule applies to locations rather than expenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses because of these changes. Lance Davenport, Commisioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marge Dalton at the above address, by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@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 06/19/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/29/2009

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.
R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.
R708-14-8. Hearing Procedures.

(1) Time and place. Alcohol/drug adjudicative proceedings will be held in the county of arrest or a county which is adjacent to the county in which the offense occurred, at a time and place designated by the division, or agreed upon by the parties.

(2) Notice. Notice shall be given as provided in Subsection 53-3-216[~~(3)~~](4) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The notice need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are deemed to have knowledge of the law.

(3) Default. If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) Evidence. The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The presiding officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The presiding officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) Information. The driver shall have access to information in the division file to the extent permitted by law.

(6) Subpoenas. Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) Administrative notice. The presiding officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the presiding officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) tape record or take notes of the hearing at his/her discretion;

(e) take appropriate measures to preserve the integrity of the hearing; and

(f) conduct hearings in accordance with division policy III-A-3, III-A-4, and III-A-5.

R708-14-9. Findings, Conclusions, Recommendations and Orders.

(1) Within a reasonable period of time after the close of the hearing, the presiding officer will issue a written decision that may include findings of fact, conclusions of law, and a recommendation.

(2) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on forms that utilize a system of check boxes and fill in blanks. The completed form will be transmitted to the presiding officer's supervisor as soon as possible for the preparation of an order that complies with Subsection 63G-4-203(1)(i).

(3) As provided in Subsection 53-3-216[~~(3)~~](4), the order will be mailed to the last known address of the driver.

(4) The order shall advise the driver of his/her right to seek a copy of written findings, conclusions, and recommendation of the presiding officer, and these will be made available to the driver only upon written request.

KEY: adjudicative proceedings
Date of Enactment or Last Substantive Amendment: [~~February 1, 2000~~]2009
Notice of Continuation: March 2, 2007
Authorizing, and Implemented or Interpreted Law: 53-3-104; 63G-4-203(1)

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NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by Section 63G-3-304; and Section R15-4-8.

Alcoholic Beverage Control, Administration
R81-4A-2
Application

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32556
FILED: 04/27/2009, 12:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being filed to implement H.B. 352 which was passed by the 2009 State Legislature. The provisions of H.B. 352 will take effect on 05/12/2009 which leaves little time to complete the regular rulemaking process. (DAR NOTE: H.B. 352 (2009) is found at Chapter 190, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: H.B. 352 created a "conditional" license for full and limited-service restaurant applicants. This rule amendment adds a paragraph that provides for the applicants of those licenses to be considered for a conditional license while they await local licensing. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32555 in this issue, May 15, 2009, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--There will be no additional fees charged, nor a notable increase in work load for the Department of Alcoholic Beverage Control (DABC) staff members to implement the conditional license provisions of the new law.
❖ LOCAL GOVERNMENTS: None--This amendment only involves DABC's licensing division and does not affect local government licensing.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--There will be no additional costs applied when applicants apply for a conditional license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no additional compliance costs since the conditional license application does not carry additional fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Getting a liquor license can mean the difference between success and failure for a restaurant owner. This rule change enables applicants for restaurant licenses to secure a license even if they have not yet received local licensing. This is an invaluable asset, especially when restaurant licenses have reached quota and are no longer readily available. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
A state law took effect on 05/12/2009 that will entitle restaurant applicants to apply for a conditional license while they await local licensing. This rule must be in place by 05/01/2009 to implement that law.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-2. Application.

[~~A~~](1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32A-4-102, -103, and -105 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32A-1-107(5).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 15, 2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-4A-10
Table Service

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32558
FILED: 04/27/2009, 14:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This emergency rule is being filed to implement the provisions of S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 provides for service at a counter and grandfathered bar structure, as well as a table, in a restaurant. This rule is written to add counters and grandfathered bar structures to the service areas in restaurants and to clarify provisions for the service of beer and heavy beer in sealed containers in those service areas. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32557 in this issue, May 15, 2009, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Licensed restaurants have always been authorized to sell beer and heavy beer. This rule merely clarifies the service of those products at a patron's table, counter, or grandfathered bar structure. This clarification will not affect the state budget.
❖ LOCAL GOVERNMENTS: None--The service of beer and heavy beer in restaurants is regulated by the Department of Alcoholic Beverage Control (DABC) and does not affect local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Small businesses holding restaurant licenses are already authorized to sell beer and heavy beer. This change simply clarifies how those products may be served to patrons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Implementing this rule will have no added compliance costs to restaurant owners. This change clarifies the provision for service of beer and heavy beer in restaurants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules of etiquette mandate that a server open and pour a can or bottle of beer in front of the patron. Other liquor dispensing is not permitted at a counter or table. This change will help restaurant owners understand the difference. It will have no fiscal impact on these or other businesses. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
The restaurant provisions in S.B. 187 were effective on 05/12/2009. This does not allow time for this rule to go through the regular rulemaking process. It is necessary that the rule be in effect when the law takes effect since the rule clarifies some of the law's provisions.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron[~~, provided the wine has an official state label affixed~~]. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-4A-11
Consumption at Patron's Table

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32560
FILED: 04/27/2009, 15:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This emergency rule is being filed to implement S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule adds counters and grandfathered bar structures to the areas in a restaurant where alcoholic beverages may be consumed. It also deletes language that prohibits tables, counters, and grandfathered bar structures from being in an area where liquor is stored or dispensed. Finally, the rule eliminates the need for a state label on containers of alcoholic beverage sold in restaurants. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32559 in this issue, May 15, 2009, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This rule simply clarifies where patrons may be seated and where alcoholic beverages may be dispensed and stored. There is no cost or savings to the state as a result of this rule.

❖ LOCAL GOVERNMENTS: None--This rule deals with issues surrounding alcohol storage, dispensing, and consumption in restaurants. This does not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Many restaurants are small businesses, but none of the provisions of this rule will have a fiscal impact on their operations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no compliance costs in eliminating the requirement for state labels on alcoholic beverage containers nor for restaurants having the ability to store and dispense alcoholic beverages at their grandfathered bar structures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact on businesses as a result of this rule. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
S.B. 187 was effective on 05/12/2009. It is important for the provisions of this rule to be in place when the law takes effect.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

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

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

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

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

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Alcoholic Beverage Control, Administration
R81-4A-15
Grandfathered Bar Structures

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32562
FILED: 04/28/2009, 11:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule adds a new section to Rule R81-4A. S.B. 187 made extensive changes in how restaurants may operate with bar structures on the premises. This rule defines the terms "actively engaged in the construction of the restaurant" and "remodels the grandfathered bar structure". (DAR NOTE: A corresponding proposed amendment is under DAR No. 32561 in this issue, May 15, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsections 32A-4A-106(7)(a)(i)(B)(I)(Bb) and 32A-4A-106(7)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be a potential cost to the state budget if restaurants decided to remodel their grandfathered bar structure as defined by this rule. Each restaurant that remodels its grandfathered bar structure may apply for credit for purchases of liquor from state stores and package agencies for the actual remodeling cost up to $30,000. There is no way of knowing how many restaurants will remodel their bar structure and apply for this liquor credit. S.B. 187 limits the aggregate of credits available to $1,000,000 and limits the time frame within which the restaurant must apply for the credit.

❖ LOCAL GOVERNMENTS: None--The provisions in S.B. 187 deal specifically with regulations of the Department of Alcoholic Beverage Control, and not with local government regulations.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Even for those small restaurants that may choose to remodel their bar structure and apply for the liquor credit, the credit will only be for the cost of the remodel, therefore, these restaurants will realize neither a cost nor savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no compliance costs associated with this proposed rule amendment. The rule simply defines terms in S.B. 187.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change merely defines terms introduced in S.B. 187. The rule in itself will have no fiscal impact on businesses. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
S.B. 187 was effective 05/12/2009. The new law requires rulemaking which must be in effect by that date.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-15. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32A-4-106(7)(a)(i) which provides that:

(i) a bar structure, as defined in 32A-1-105(4), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32A-4-106(7)(a)(ii) which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32A-4-106(7)(a)(i)(B)(I)(Bb) and 32A-4-106(7)(a)(ii) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32A-4-106(7)(a)(ii) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32A-4-106(6), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-4-106(7)(a)(i)(B)(I)(Bb); 32A-4-106(7)(a)(ii)

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Alcoholic Beverage Control, Administration

R81-4C-2

Application

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 32564
FILED: 04/28/2009, 12:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is being proposed to implement H.B. 352 which was passed by the 2009 State Legislature. (DAR NOTE: H.B. 352 (2009) is found at Chapter 190, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: H.B. 352 created a "conditional" license for full and limited-service restaurant applicants. This rule change adds a subsection that provides for the applicants of those licenses to be considered for a conditional license. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32563 in this issue, May 15, 2009, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--There will be no additional fees charged, nor a notable increase in work load for the Department of Alcoholic Beverage Control (DABC) staff members to implement the conditional license provision of the new law.

❖ LOCAL GOVERNMENTS: None--This amendment only involves DABC's licensing department and does not involve local government agencies.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--There will be no additional fees applied when applicants apply for a conditional licensing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no additional compliance costs since the conditional license application does not carry additional fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Getting a liquor license can mean the difference between success and failure for a restaurant. This rule change enables applicants for restaurant licenses to secure a license even if they have not yet received local licensing. This is an invaluable asset, especially when restaurant licenses have reached quota and are no longer readily available. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
H.B. 352 was effective on 05/12/2009. It is important that this rule is in place by that date to clarify the conditional license provision in the rule.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-2. Application.

[~~A~~](1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a limited restaurant license when the requirements of Sections 32A-4-303, -304, and -306 have been met, a completed application has been received by the department, and the limited restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32A-1-107(5).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-4C-9
Table Service

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32568
FILED: 04/28/2009, 14:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement the provisions of S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 provides for service at a counter and grandfathered bar structure, as well as a table, in restaurants. This change is written to add counters and grandfathered bar structures to the service areas in restaurants and to clarify provisions for the service of beer and heavy beer in sealed containers in those service areas. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32567 in this issue, May 15, 2009, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Licensed restaurants have always been authorized to sell beer and heavy beer. This change merely clarifies the service of those products at a patron's table, counter, or grandfathered bar structure.

❖ LOCAL GOVERNMENTS: None--The service of beer and heavy beer in restaurants is regulated by the Department of Alcoholic Beverage Control and does not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Small businesses holding restaurant licenses are already authorized to sell beer and heavy beer. This change simply clarifies how and where those products may be served.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Implementing this change will have no added compliance costs to restaurant owners. The change clarifies the provision for service of beer and heavy beer in restaurants at a patron's table, counter, or grandfathered bar structure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment sets guidelines for the service of beer and heavy beer in limited-service restaurants. There will be no added fiscal impact as a result of this rule amendment. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
S.B. 187 was effective on 05/12/2009. This rule change must be in place by that date to provide guidelines for the service of beer and heavy beer in restaurants.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-9. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the limited restaurant or carried in by a patron[~~, provided the wine has an official state label affixed~~]. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009

Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

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Alcoholic Beverage Control, Administration
R81-4C-10
Consumption at Patron's Table

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32571
FILED: 04/28/2009, 16:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is being proposed to implement S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule change adds counters and grandfathered bar structures to the areas in a restaurant where alcoholic beverages may be consumed. It also deletes language that prohibits tables, counters, and grandfathered bar structures from being in an area where liquor is stored or dispensed. Finally, the change eliminates the need for a state label on containers of alcoholic beverage sold in restaurants. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32569 in this issue, May 15, 2009, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This change simply clarifies where patrons may be seated and where alcoholic beverages may be dispensed and stored. It also eliminates the need for state labels on bottles of wine and heavy beer sold in restaurants. There will be no cost or savings to the state budget if these rule changes are made.
❖ LOCAL GOVERNMENTS: None--This change deals with issues surrounding alcohol storage, dispensing, and consumption in restaurants. This does not affect local ordinances or local government agencies.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Many restaurants are small businesses. This rule change deals with alcohol storage, dispensing, and consumption. No part of the change will have a fiscal impact on their operations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There will be no compliance costs involved in eliminating the need for state labels on liquor containers nor for a restaurant owner being authorized to store and dispense alcoholic beverages from a grandfathered bar structure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No part of this change will create a fiscal impact on businesses in Utah. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
S.B. 187 was effective on 05/12/2009. The provisions of this rule change must be in effect at that time to provide guidelines for licensees on the services of alcohol in their establishments.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-10. Consumption at Patron's Table, Counter, and Grandfathered Bar Structure".

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

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

~~(3) All wine and heavy beer consumed in a limited restaurant must come from a container or package having an official state label affixed.~~]

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

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Alcoholic Beverage Control, Administration
R81-4C-13
Grandfathered Bar Structures

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32574
FILED: 04/28/2009, 17:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is proposed to implement provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This change adds a new section to Rule R81-4C. S.B. 187 made extensive changes in how restaurants may operate with bar structures on the premises. This change defines the terms "actively engaged in the construction of the restaurant" and "remodels the grandfathered bar structure". (DAR NOTE: A corresponding proposed amendment is under DAR No. 32572 in this issue, May 15, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsections 32A-4-307(7)(a)(i)(B)(I)(Bb) and 32A-4-307(7)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be a potential cost to the state budget if restaurants decide to remodel their grandfathered bar structure as defined by this change. Each restaurant that remodels its grandfathered bar structure may apply for credit for purchases of liquor from state stores and package agencies for the actual remodeling cost up to $30,000. There is no way of knowing at this point how many restaurants will remodel their bar structure and apply for the liquor credit. S.B. 187 limits the aggregate credit available to $1,000,000 and limits the time frame within which the restaurant must apply for the credit.

❖ LOCAL GOVERNMENTS: None--The provisions of S.B. 187 deal specifically with regulations of the Department of Alcoholic Beverage Control, and not with local government regulations.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Even for those small restaurants that may choose to remodel their bar structure and apply for the liquor credit, the credit will only be for the cost of the remodel, therefore, these restaurants will realize neither a cost nor a savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no compliance costs associated with this change. The change simply defines terms introduced in S.B. 187.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because it is desirable to many restaurant owners to have a working bar structure in their establishment, it is not anticipated that many restaurant owners will choose to remodel their bar structure to take advantage of the liquor credit option in S.B. 187. And if they do, the liquor credit will only be in the amount of the remodel costs. Therefore, it is not anticipated that this change will have a fiscal impact on many businesses. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
S.B. 187 was effective on 05/12/2009. The provisions in this change must be in effect on that date to provide guidelines to licensees who have questions about the provisions of the new law.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-13. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32A-4-307(7)(a)(i) which provides that:

(i) a bar structure, as defined in 32A-1-105(4), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a limited restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32A-4-307(7)(a)(ii) which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32A-4-307(7)(a)(i)(B)(I)(Bb) and 32A-4-307(7)(a)(ii) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32A-4-307(7)(a)(ii) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32A-4-307(6), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-4-307(7)(a)(i)(B)(I)(Bb); 32A-4-307(7)(a)(ii)

♦ ♦

Alcoholic Beverage Control, Administration
R81-4D-10
State Label

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32577
FILED: 04/29/2009, 11:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is to implement S.B. 187 which was passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The requirement for state labels on liquor containers was eliminated by S.B. 187. This change eliminates the need for on-premise banquet licensees to only sell or serve liquor with a state label on the container. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32576 in this issue, May 15, 2009, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--After 05/12/2009, liquor purchased by on-premise banquet licensees will no longer have a state label. The fact that these licensees have bottles without the label will have no cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: None--The state label was a requirement of the Liquor Act, and not requiring on-premise banquet licensees to have bottles with the label will not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--There is no cost or savings to the licensee or others in not having liquor bottles with state labels since the labels are affixed by the state store and/or package agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There is no cost or savings to the licensee in not having liquor bottles with state labels since the labels are affixed by the state store and/or package agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no reason there will be a fiscal impact for businesses as a result of this change. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
S.B. 187 was effective on 05/12/2009. This change must be in place by that date to provide guidelines for licensees and law enforcement agencies to comply with the new law.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
[~~R81-4D-10. State Label.~~
~~All liquor consumed on the premises of an on-premise banquet license must come from a container or package having an official state label affixed.~~

]**KEY: alcoholic beverages**
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-5-18
Age Verification - Dining and Social Clubs

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32606
FILED: 04/30/2009, 15:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is being proposed to implement provisions of S.B. 187 passed by the 2009 State Legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule change: 1) establishes the minimum technology specifications of electronic age verification devices; 2) establishes the procedures for recording identification that cannot be electronically verified; and 3) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by law. (DAR NOTE: A corresponding proposed amendment is under DAR No. 32604 in this issue, May 15, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107 and Subsection 32A-1-304.5(5)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The Department of Alcoholic Beverage Control (DABC) will not be required to fund the purchase of these electronic ID devices. Licensees will be required to purchase the devices, therefore, there will be no cost or savings to the state budget.
❖ LOCAL GOVERNMENTS: None--The law requiring electronic ID devices will be regulated by the DABC. Local governments will not be involved.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Many dining and social club licensees have fewer than fifty employees. It is estimated that each electronic ID device will cost approximately $800. There are currently 295 dining and social clubs in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost of each electronic ID device is approximately $800. There are currently 295 dining and social clubs in Utah. Each club will be required to have at least one device, though some of the larger clubs will likely need to have two or more devices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Though it will cost each dining and social club licensee a minimum of $800 to comply with this rule, the legislature felt it was the best way to ensure that minors are not permitted into clubs or to purchase an alcohol beverage. In this case, the end justifies the means. Dennis R. Kellen, Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
Section 32A-1-304.5 mandates that the Alcoholic Beverage Control (ABC) Commission write rules to establish guidelines for the parameters and procedural requirements of the law requiring dining and social club licensees to verify the age of its patrons with an electronic ID device. Though the law governing the use of these devices does not take effect until 07/01/2009, licensees need to know as soon as possible what is required in order to purchase an ID device and have it functional by 07/01/2009.

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

THIS RULE IS EFFECTIVE ON: 05/01/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. Private Clubs.
R81-5-18. Age Verification - Dining and Social Clubs.
(1) Authority. 32A-1-303 and 32A-1-304.5.
(2) Purpose.
(a) 32A-1-304.5 requires dining and social club licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.
(b) This rule:
(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32A.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Section 32A-5-107;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32A-1-303.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: May 1, 2009
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-304.5(5); 32A-5-107(18); 32A-5-107(23)

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End of the Notices of 120-Day (Emergency) 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*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63G-3-301(9).

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services
Fleet Operations
No. 32189 (AMD): R27-1-2. Definitions.
Published: January 1, 2009
Effective: April 20, 2009

No. 32292 (AMD): R27-7. Safety and Loss Prevention of State Vehicles.
Published: February 1, 2009
Effective: April 20, 2009

No. 32291 (AMD): R27-10. Identification Mark for State Motor Vehicles.
Published: February 1, 2009
Effective: April 20, 2009

Agriculture and Food
Marketing and Development
No. 32401 (AMD): R65-7. Horse Racing.
Published: March 15, 2009
Effective: April 21, 2009

Alcoholic Beverage Control
Administration
No. 32414 (AMD): R81-1-6. Violation Schedule.
Published: March 15, 2009
Effective: April 22, 2009

Commerce
Occupational and Professional Licensing
No. 32212 (AMD): R156-31b. Nurse Practice Act Rule.
Published: January 1, 2009
Effective: May 1, 2009

No. 32212 (CPR): R156-31b. Nurse Practice Act Rule.
Published: March 15, 2009
Effective: May 1, 2009

No. 32411 (AMD): R156-37-609a. Controlled Substance Database - Reporting Procedure and Format for Submission to the Database for Pharmacies and Pharmacy Groups Selected by the Division for the Real Time Pilot Program.
Published: March 15, 2009
Effective: April 21, 2009

No. 32412 (AMD): R156-54. Radiology Technologist and Radiology Practical Technician Licensing Act Rules.
Published: March 15, 2009
Effective: April 21, 2009

Real Estate
No. 32422 (NEW): R162-211. Adjusted Licensing Terms.
Published: March 15, 2009
Effective: April 29, 2009

Education
Administration
No. 32417 (AMD): R277-433. Disposal of Textbooks in the Public Schools.
Published: March 15, 2009
Effective: April 21, 2009

No. 32418 (AMD): R277-701-7. Waivers or Exceptions for Student Requirements.
Published: March 15, 2009
Effective: April 21, 2009

No. 32419 (AMD): R277-710. International Baccalaureate Programs.
Published: March 15, 2009
Effective: April 21, 2009

Environmental Quality
Drinking Water
No. 32406 (AMD): R309-510. Facility Design and Operation: Minimum Sizing Requirements.
Published: March 15, 2009
Effective: April 27, 2009

No. 32407 (AMD): R309-520. Facility Design and Operation: Disinfection.
Published: March 15, 2009
Effective: April 27, 2009

No. 32408 (AMD): R309-525-11. Chemical Addition.
Published: March 15, 2009
Effective: April 27, 2009

No. 32409 (AMD): R309-530-6. Slow Sand Filtration.
Published: March 15, 2009
Effective: April 27, 2009

No. 32410 (AMD): R309-545-15. Venting.
Published: March 15, 2009
Effective: April 27, 2009

Health
Health Systems Improvement, Child Care Licensing
No. 32416 (AMD): R430-100. Child Care Centers.
Published: March 15, 2009
Effective: July 1, 2009

Human Resource Management
Administration
No. 32424 (AMD): R477-12-3. Reduction in Force.
Published: March 15, 2009
Effective: April 21, 2009

Judicial Performance Evaluation Commission
No. 32423 (NEW): R597-1. General Provisions.
Published: March 15, 2009
Effective: May 1, 2009

No. 32421 (NEW): R597-3. Judicial Performance Evaluations.
Published: March 15, 2009
Effective: May 1, 2009

Natural Resources
Wildlife Resources
No. 32420 (NEW): R657-62. Drawing Application Procedures.
Published: March 15, 2009
Effective: April 21, 2009

Sports Authority (Utah)
Pete Suazo Utah Athletic Commission
No. 32205 (AMD): R859-1. Pete Suazo Utah Athletic Commission Act Rule.
Published: January 1, 2009
Effective: May 1, 2009

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2009, including notices of effective date received through May 1, 2009. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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R13-3	Americans with Disabilities Act Grievance Procedures	32204	AMD	02/26/2009	2009-1/3
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R27-10	Identification Mark for State Motor Vehicles	32291	AMD	04/20/2009	2009-3/4
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R28-2-3	Procedures	32362	AMD	05/11/2009	2009-5/2
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R33-6	Modification and Termination of Contracts for Supplies and Services (5YR EXTENSION)	31983	NSC	01/29/2009	Not Printed
R33-6	Modification and Termination of Contracts for Supplies and Services	32344	5YR	01/29/2009	2009-4/55

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R33-7	Cost Principles	32345	5YR	01/29/2009	2009-4/55
R33-9	Insurance Procurement (5YR EXTENSION)	31985	NSC	01/29/2009	Not Printed
R33-9	Insurance Procurement	32346	5YR	01/29/2009	2009-4/56
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R35-4	Compliance with State Records Committee Decisions and Orders	32359	NSC	02/26/2009	Not Printed
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R81-1-28	Special Commission Meetings-Fees	32333	AMD	03/24/2009	2009-4/8
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R81-4A-10	Table Service	32558	EMR	05/01/2009	2009-10/149
R81-4A-11	Consumption at Patron's Table	32560	EMR	05/01/2009	2009-10/150
R81-4A-15	Grandfathered Bar Structures	32562	EMR	05/01/2009	2009-10/151
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R137-1-22	The Board's Appellate/Step 6 Procedures	32288	EMR	01/08/2009	2009-3/79
R137-1-22	The Board's Appellate/Step 6 Procedures	32290	AMD	05/06/2009	2009-3/7
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R156-31b	Nurse Practice Act Rule	32212	AMD	05/01/2009	2009-1/13
R156-31b	Nurse Practice Act Rule	32212	CPR	05/01/2009	2009-6/78
R156-31b-607	Approved Nursing Education Programs Located Outside of Utah	32365	NSC	02/26/2009	Not Printed
R156-31c	Nurse Licensure Compact Rules	32430	AMD	05/11/2009	2009-7/2
R156-37-609a	Controlled Substance Database - Reporting Procedure and Format for Submission to the Database for Pharmacies and Pharmacy Groups Selected by the Division for the Real Time Pilot Program	32411	AMD	04/21/2009	2009-6/18
R156-40-302d	Time Limitation for TRT applicants	32236	NSC	01/22/2009	Not Printed
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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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co-curricular					
Education, Administration	32220	R277-494-3	NSC	01/22/2009	Not Printed
	32323	R277-494-3	NSC	02/25/2009	Not Printed
collections					
Tax Commission, Auditing	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
	32032	R865-12L-12	AMD	01/01/2009	2008-21/79
	32015	R865-12L-13	AMD	01/01/2009	2008-21/79
colleges					
Public Safety, Administration	32404	R698-4	5YR	02/25/2009	2009-6/93
complaints					
Education, Rehabilitation	32270	R280-201	5YR	01/05/2009	2009-3/86
Workforce Services, Administration	32237	R982-101	NSC	01/22/2009	Not Printed
confidentiality					
Education, Administration	32255	R277-117	NEW	02/24/2009	2009-2/15
	32400	R277-117-2	NSC	03/14/2009	Not Printed
conflict					
Human Services, Administration	32154	R495-888	NEW	01/21/2009	2008-24/18

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consumer					
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contractors					
Commerce, Occupational and Professional Licensing	32438	R156-55a	AMD	05/11/2009	2009-7/3
	32001	R156-56	AMD	01/01/2009	2008-21/9
	32476	R156-56-302	NSC	04/14/2009	Not Printed
contracts					
Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
Transportation, Operations, Construction	32307	R916-2	NSC	02/05/2009	Not Printed
controlled substances					
Commerce, Occupational and Professional Licensing	32411	R156-37-609a	AMD	04/21/2009	2009-6/18
corrections					
Corrections, Administration	31997	R251-105	AMD	02/26/2009	2008-21/31
cost sharing					
Health, Health Care Financing, Coverage and Reimbursement Policy	32230	R414-200	AMD	02/24/2009	2009-2/31
counselors					
Education, Administration	32256	R277-462	AMD	02/24/2009	2009-2/16
	32446	R277-462	AMD	05/08/2009	2009-7/5
covered-at-work					
Health, Health Care Financing, Coverage and Reimbursement Policy	32186	R414-310	AMD	01/22/2009	2008-24/13
credit enhancements					
Environmental Quality, Drinking Water	32028	R309-700	AMD	01/28/2009	2008-21/34
credit insurance filings					
Insurance, Administration	32469	R590-228	5YR	03/26/2009	2009-8/64
credit services					
Commerce, Consumer Protection	32382	R152-21	5YR	02/17/2009	2009-5/24
criminal records					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32208	R722-900	NSC	01/12/2009	Not Printed
curation					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	2009-3/89
curricula					
Education, Administration	32313	R277-700	AMD	03/10/2009	2009-3/17
	32314	R277-705	AMD	03/10/2009	2009-3/20
custody					
Education, Administration	32269	R277-735	5YR	01/05/2009	2009-3/85
data standards					
Education, Administration	32448	R277-484	AMD	05/08/2009	2009-7/10

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deception detection examiner					
Commerce, Occupational and Professional Licensing	32473	R156-64-302a	NSC	04/14/2009	Not Printed
deception detection intern					
Commerce, Occupational and Professional Licensing	32473	R156-64-302a	NSC	04/14/2009	Not Printed
decommissioning					
Environmental Quality, Radiation Control	32206	R313-22-75	AMD	02/12/2009	2009-1/27
definitions					
Administrative Services, Fleet Operations	32189	R27-1-2	AMD	04/20/2009	2009-1/5
Environmental Quality, Air Quality	32351	R307-101-3	AMD	05/07/2009	2009-5/8
demonstration					
Health, Health Care Financing, Coverage and Reimbursement Policy	32186	R414-310	AMD	01/22/2009	2008-24/13
depredation					
Natural Resources, Wildlife Resources	32299	R657-44-3	AMD	03/10/2009	2009-3/69
developmentally disabled					
Transportation, Administration	32303	R907-62-7	NSC	02/05/2009	Not Printed
	32161	R907-62-7	NSC	02/05/2009	Not Printed
dietitians					
Commerce, Occupational and Professional Licensing	32478	R156-49-304	NSC	04/14/2009	Not Printed
direct filtration					
Environmental Quality, Drinking Water	32409	R309-530-6	AMD	04/27/2009	2009-6/34
disabilities					
Human Services, Services for People with Disabilities	32308	R539-5-8	EMR	01/15/2009	2009-3/81
Workforce Services, Administration	32237	R982-101	NSC	01/22/2009	Not Printed
disabled persons					
Administrative Services, Administration	32204	R13-3	AMD	02/26/2009	2009-1/3
	32431	R13-3-8	NSC	03/26/2009	Not Printed
Education, Rehabilitation	32270	R280-201	5YR	01/05/2009	2009-3/86
	32271	R280-202	5YR	01/05/2009	2009-3/86
discharge permits					
Environmental Quality, Water Quality	32340	R317-8	AMD	04/07/2009	2009-4/21
disciplinary actions					
Education, Administration	32221	R277-609-1	NSC	01/22/2009	Not Printed
discrimination					
Labor Commission, Adjudication	32277	R602-7	NEW	03/10/2009	2009-3/52
Transportation, Administration	32303	R907-62-7	NSC	02/05/2009	Not Printed
	32161	R907-62-7	NSC	02/05/2009	Not Printed

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diversion programs					
Commerce, Occupational and Professional Licensing	32241	R156-1	AMD	02/24/2009	2009-2/2
drinking water					
Environmental Quality, Drinking Water	32406	R309-510	AMD	04/27/2009	2009-6/28
	32168	R309-515-7	AMD	02/15/2009	2008-24/3
	32407	R309-520	AMD	04/27/2009	2009-6/32
	32408	R309-525-11	AMD	04/27/2009	2009-6/33
	32409	R309-530-6	AMD	04/27/2009	2009-6/34
	32169	R309-540-6	AMD	02/15/2009	2008-24/5
	32410	R309-545-15	AMD	04/27/2009	2009-6/36
dual enrollment					
Education, Administration	32649	R277-438	5YR	05/04/2009	Not Printed
due process					
Human Services, Substance Abuse and Mental Health	32183	R523-1-5	AMD	01/22/2009	2008-24/26
education					
Commerce, Real Estate	31998	R162-103	AMD	01/01/2009	2008-21/23
education finance					
Education, Administration	32374	R277-425	5YR	02/13/2009	2009-5/26
educational testing					
Education, Administration	32310	R277-473	AMD	03/10/2009	2009-3/10
	32376	R277-712	5YR	02/13/2009	2009-5/27
educator licensing					
Education, Administration	32142	R277-502	AMD	01/07/2009	2008-23/5
	32450	R277-502-4	AMD	05/08/2009	2009-7/15
	32143	R277-518	AMD	01/07/2009	2008-23/7
educators					
Education, Administration	32140	R277-110-1	AMD	01/07/2009	2008-23/2
	32312	R277-510	AMD	03/10/2009	2009-3/14
	32144	R277-520-1	AMD	01/07/2009	2008-23/9
efficiency					
Natural Resources, Geological Survey	32330	R638-3	AMD	04/06/2009	2009-4/37
effluent standards					
Environmental Quality, Water Quality	32380	R317-1	AMD	04/07/2009	2009-5/11
elections					
Lieutenant Governor, Elections	32512	R623-2	5YR	04/07/2009	2009-9/54
	32513	R623-3	5YR	04/07/2009	2009-9/54
electronic devices					
Education, Administration	32141	R277-495	NEW	01/07/2009	2008-23/3

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electronic submissions Environmental Quality, Water Quality	32341	R317-1-9	AMD	04/07/2009	2009-4/17
eligibility Health, Health Care Financing, Coverage and Reimbursement Policy	32184	R414-308	AMD	01/26/2009	2008-24/9
emergency medical services Health, Health Systems Improvement, Emergency Medical Services	32084	R426-5-4	AMD	02/24/2009	2008-22/25
	32279	R426-7-5	NSC	02/05/2009	Not Printed
	31919	R426-8-4	AMD	01/13/2009	2008-18/29
	32384	R426-12-1400	NSC	03/14/2009	Not Printed
	32280	R426-13-1300	NSC	02/05/2009	Not Printed
	32281	R426-14-600	NSC	02/05/2009	Not Printed
	32282	R426-15-700	NSC	02/05/2009	Not Printed
employees' rights Human Resource Management, Administration	32424	R477-12-3	AMD	04/21/2009	2009-6/55
	32427	R477-12-3	EMR	03/02/2009	2009-6/87
employment Corrections, Administration	31997	R251-105	AMD	02/26/2009	2008-21/31
	32426	R477-4-4	EMR	03/02/2009	2009-6/86
employment support procedures Workforce Services, Employment Development	32239	R986-100	NSC	01/22/2009	Not Printed
employment tests Workforce Services, Unemployment Insurance	32242	R994-204-402	NSC	01/22/2009	Not Printed
energy Natural Resources, Geological Survey	32331	R638-2	AMD	04/06/2009	2009-4/29
	32330	R638-3	AMD	04/06/2009	2009-4/37
enforcement Natural Resources, Water Rights	32201	R655-14	AMD	02/10/2009	2009-1/35
enforcement (administrative) Transportation, Administration	32214	R907-1	AMD	04/14/2009	2009-1/45
engineers Commerce, Occupational and Professional Licensing	32364	R156-22-102	AMD	04/07/2009	2009-5/3
enrollment options Education, Administration	32265	R277-437	5YR	01/05/2009	2009-3/83
environment Tax Commission, Auditing	32392	R865-7H	5YR	02/19/2009	2009-6/93

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escrow insurance					
Insurance, Title and Escrow Commission	32167	R592-13	NEW	01/22/2009	2008-24/31
evaluation cycles					
Judicial Performance Evaluation Commission, Administration	32421	R597-3	NEW	05/01/2009	2009-6/67
exiting provider					
Public Service Commission, Administration	32306	R746-350	5YR	01/14/2009	2009-3/88
expenses					
Public Safety, Homeland Security	32305	R704-1	NSC	02/05/2009	Not Printed
extracurricular					
Education, Administration	32220	R277-494-3	NSC	01/22/2009	Not Printed
	32323	R277-494-3	NSC	02/25/2009	Not Printed
eyeglasses					
Health, Health Care Financing, Coverage and Reimbursement Policy	32226	R414-53	AMD	02/24/2009	2009-2/27
facilities					
Education, Administration	32268	R277-724	5YR	01/05/2009	2009-3/85
facilities use					
Capitol Preservation Board (State), Administration	32343	R131-2	AMD	03/26/2009	2009-4/9
facility					
Health, Health Care Financing, Coverage and Reimbursement Policy	32325	R414-9	5YR	01/26/2009	2009-4/56
fair employment practices					
Human Resource Management, Administration	32426	R477-4-4	EMR	03/02/2009	2009-6/86
family employment program					
Workforce Services, Employment Development	32114	R986-200-240	AMD	01/06/2009	2008-22/41
	32209	R986-200-246	AMD	02/12/2009	2009-1/48
federal election reform					
Lieutenant Governor, Elections	32513	R623-3	5YR	04/07/2009	2009-9/54
feed contamination					
Agriculture and Food, Plant Industry	32031	R68-2-3	AMD	02/25/2009	2008-21/4
fees					
Human Services, Substance Abuse and Mental Health	32183	R523-1-5	AMD	01/22/2009	2008-24/26
filtration					
Environmental Quality, Drinking Water	32408	R309-525-11	AMD	04/27/2009	2009-6/33
financial assistance					
Environmental Quality, Drinking Water	32029	R309-705	AMD	01/28/2009	2008-21/40
financial reimbursement					
Public Safety, Homeland Security	32305	R704-1	NSC	02/05/2009	Not Printed

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fingerprinting					
Human Services, Administration, Administrative Services, Licensing	32193	R501-14	NSC	01/12/2009	Not Printed
fire safe cigarettes					
Public Safety, Fire Marshal	32461	R710-13	NSC	04/13/2009	Not Printed
firearms					
Administrative Services, Fleet Operations, Surplus Property	32362	R28-2-3	AMD	05/11/2009	2009-5/2
fireworks					
Public Safety, Fire Marshal	32451	R710-2-6	AMD	05/12/2009	2009-7/33
fish					
Natural Resources, Wildlife Resources	32129	R657-13	AMD	01/07/2009	2008-23/23
	32081	R657-60-2	AMD	01/07/2009	2008-22/28
	32298	R657-60-2	AMD	03/10/2009	2009-3/72
fishing					
Natural Resources, Wildlife Resources	32129	R657-13	AMD	01/07/2009	2008-23/23
flocculation					
Environmental Quality, Drinking Water	32408	R309-525-11	AMD	04/27/2009	2009-6/33
food inspection					
Agriculture and Food, Regulatory Services	32289	R70-630	5YR	01/08/2009	2009-3/83
food programs					
Education, Administration	32268	R277-724	5YR	01/05/2009	2009-3/85
food services					
Health, Epidemiology and Laboratory Services, Environmental Services	32370	R392-101	5YR	02/12/2009	2009-5/30
foster care					
Human Services, Administration, Administrative Services, Licensing	32192	R501-12-8	NSC	01/12/2009	Not Printed
Human Services, Child and Family Services	32658	R512-306	5YR	05/07/2009	Not Printed
	32182	R512-309	NEW	01/21/2009	2008-24/24
freedom of religion					
Education, Administration	32648	R277-105	5YR	05/04/2009	Not Printed
fuel					
Tax Commission, Auditing	32334	R865-4D-2	AMD	03/26/2009	2009-4/51
	32035	R865-4D-2	AMD	01/01/2009	2008-21/76
	32335	R865-4D-6	AMD	03/26/2009	2009-4/52
	32336	R865-4D-24	AMD	03/26/2009	2009-4/53
game laws					
Natural Resources, Wildlife Resources	32337	R657-5	AMD	03/24/2009	2009-4/43
	32462	R657-5-73	NSC	04/14/2009	Not Printed
	32300	R657-17-4	AMD	03/10/2009	2009-3/61
	32319	R657-33-19	AMD	03/24/2009	2009-4/50

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Environmental Quality, Radiation Control	32050	R313-21	CPR	02/11/2009	2008-24/38
	32050	R313-21	AMD	02/11/2009	2008-21/47
gifted children					
Education, Administration	32376	R277-712	5YR	02/13/2009	2009-5/27
government documents					
Administrative Services, Records Committee	32355	R35-1-4	NSC	02/26/2009	Not Printed
	32358	R35-2	NSC	02/26/2009	Not Printed
	32359	R35-4	NSC	02/26/2009	Not Printed
	32361	R35-6	NSC	02/26/2009	Not Printed
government purchasing					
Administrative Services, Purchasing and General Services	31983	R33-6	NSC	01/29/2009	Not Printed
	32344	R33-6	5YR	01/29/2009	2009-4/55
	31984	R33-7	NSC	01/29/2009	Not Printed
	32345	R33-7	5YR	01/29/2009	2009-4/55
	31985	R33-9	NSC	01/29/2009	Not Printed
	32346	R33-9	5YR	01/29/2009	2009-4/56
government records access					
Crime Victim Reparations, Administration	32395	R270-4	5YR	02/19/2009	2009-6/92
governmental documents					
Administrative Services, Records Committee	32360	R35-5	NSC	02/26/2009	Not Printed
GRAMA					
Regents (Board Of), Salt Lake Community College	32433	R784-1	5YR	03/09/2009	2009-7/38
GRAMA compliance					
Human Services, Recovery Services	32159	R527-5	R&R	01/21/2009	2008-24/27
grants					
Education, Administration	32255	R277-117	NEW	02/24/2009	2009-2/15
	32400	R277-117-2	NSC	03/14/2009	Not Printed
great seal					
Lieutenant Governor, Administration	32501	R622-2	5YR	04/07/2009	2009-9/53
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Administrative Services, Administration	32204	R13-3	AMD	02/26/2009	2009-1/3
	32431	R13-3-8	NSC	03/26/2009	Not Printed
	32429	R137-1	NSC	04/07/2009	Not Printed
	32286	R137-1-2	EMR	01/08/2009	2009-3/77
	32287	R137-1-2	AMD	05/06/2009	2009-3/5
	32288	R137-1-22	EMR	01/08/2009	2009-3/79
	32290	R137-1-22	AMD	05/06/2009	2009-3/7

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	32427	R477-12-3	EMR	03/02/2009	2009-6/87
hardship grants					
Environmental Quality, Drinking Water	32028	R309-700	AMD	01/28/2009	2008-21/34
hazardous waste					
Environmental Quality, Solid and Hazardous Waste	32137	R315-1-1	AMD	01/15/2009	2008-23/17
	32138	R315-2	AMD	01/15/2009	2008-23/19
	32231	R315-15-13	NSC	01/22/2009	Not Printed
health care professionals					
Public Safety, Driver License	32202	R708-7-10	AMD	02/19/2009	2009-1/41
health care quality					
Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21
health insurance					
Insurance, Administration	32272	R590-126-4	AMD	03/12/2009	2009-3/45
health insurance filings					
Insurance, Administration	32442	R590-220	5YR	03/12/2009	2009-7/37
health maintenance organization					
Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21
hearing aids					
Commerce, Occupational and Professional Licensing	32398	R156-46a	5YR	02/24/2009	2009-6/91
	32235	R156-46a-302c	NSC	01/22/2009	Not Printed
hearing instrument intern					
Commerce, Occupational and Professional Licensing	32398	R156-46a	5YR	02/24/2009	2009-6/91
	32235	R156-46a-302c	NSC	01/22/2009	Not Printed
hearing instrument specialist					
Commerce, Occupational and Professional Licensing	32398	R156-46a	5YR	02/24/2009	2009-6/91
	32235	R156-46a-302c	NSC	01/22/2009	Not Printed
hearings					
Labor Commission, Adjudication	32276	R602-2-2	AMD	03/10/2009	2009-3/51
	32277	R602-7	NEW	03/10/2009	2009-3/52
	32278	R602-8	NEW	03/10/2009	2009-3/57
Help America Vote Act					
Lieutenant Governor, Elections	32512	R623-2	5YR	04/07/2009	2009-9/54
highly qualified					
Education, Administration	32312	R277-510	AMD	03/10/2009	2009-3/14
highways					
Transportation, Program Development	32179	R926-10	AMD	02/19/2009	2008-24/32

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hiring practices					
Human Resource Management, Administration	32426	R477-4-4	EMR	03/02/2009	2009-6/86
historic sites					
Community and Culture, History	32244	R212-6	NSC	01/22/2009	Not Printed
horses					
Agriculture and Food, Marketing and Development	32401	R65-7	AMD	04/21/2009	2009-6/4
housing finance					
Housing Corporation (Utah), Administration	32211	R460-7-2	NSC	01/12/2009	Not Printed
human services					
Human Services, Administration, Administrative Services, Licensing	32190	R501-1	NSC	01/12/2009	Not Printed
	32191	R501-4-7	NSC	01/12/2009	Not Printed
	32192	R501-12-8	NSC	01/12/2009	Not Printed
hunting					
Natural Resources, Wildlife Resources	32309	R657-38	AMD	03/10/2009	2009-3/62
hunting and fishing licenses					
Natural Resources, Wildlife Resources	32300	R657-17-4	AMD	03/10/2009	2009-3/61
hybrid vehicles					
Transportation, Program Development	32076	R926-11	NEW	01/05/2009	2008-22/39
hydropneumatic systems					
Environmental Quality, Drinking Water	32169	R309-540-6	AMD	02/15/2009	2008-24/5
ignition interlock systems					
Public Safety, Driver License	32507	R708-31	5YR	04/07/2009	2009-9/57
in-service training					
Public Safety, Peace Officer Standards and Training	32472	R728-502	5YR	03/30/2009	2009-8/65
incidents					
Administrative Services, Fleet Operations	32292	R27-7	AMD	04/20/2009	2009-3/2
independent contractor					
Workforce Services, Unemployment Insurance	32242	R994-204-402	NSC	01/22/2009	Not Printed
individual home booster pumps					
Environmental Quality, Drinking Water	32169	R309-540-6	AMD	02/15/2009	2008-24/5
industrial waste					
Environmental Quality, Water Quality	32380	R317-1	AMD	04/07/2009	2009-5/11
informal procedures					
Community and Culture, Library	32295	R223-1	NSC	02/05/2009	Not Printed
infrastructure assistance					
Transportation Commission, Administration	31920	R940-3	NEW	01/12/2009	2008-18/62
	32082	R940-3-2	NSC	01/12/2009	Not Printed

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inmates					
Education, Administration	32269	R277-735	5YR	01/05/2009	2009-3/85
	32067	R671-201	AMD	02/25/2009	2008-22/29
inpsections					
Agriculture and Food, Plant Industry	32332	R68-7	AMD	03/26/2009	2009-4/4
inspections					
Agriculture and Food, Animal Industry	32397	R58-20	5YR	02/23/2009	2009-6/90
instructional materials					
Education, Administration	32257	R277-469	AMD	02/24/2009	2009-2/20
	32369	R277-469-3	NSC	02/26/2009	Not Printed
instructor certification					
Public Safety, Peace Officer Standards and Training	32472	R728-502	5YR	03/30/2009	2009-8/65
insurance					
Insurance, Administration	32320	R590-148-22	NSC	02/25/2009	Not Printed
	32403	R590-149-7	NSC	03/14/2009	Not Printed
	32529	R590-166	5YR	04/15/2009	2009-9/51
	32405	R590-170	5YR	02/25/2009	2009-6/92
insurance law					
Insurance, Administration	32532	R590-98	5YR	04/15/2009	2009-9/51
	32322	R590-131-3	NSC	02/25/2009	Not Printed
	32530	R590-190	5YR	04/15/2009	2009-9/52
	32533	R590-191	5YR	04/15/2009	2009-9/52
insurance licensing					
Insurance, Administration	32435	R590-195	5YR	03/11/2009	2009-7/36
interconnection					
Public Service Commission, Administration	32283	R746-365	5YR	01/06/2009	2009-3/88
interest buy-downs					
Environmental Quality, Drinking Water	32028	R309-700	AMD	01/28/2009	2008-21/34
international baccalaureate					
Education, Administration	32419	R277-710	AMD	04/21/2009	2009-6/27
international guest teachers					
Education, Administration	32145	R277-527	NEW	01/07/2009	2008-23/11
	32285	R277-527-3	NSC	02/05/2009	Not Printed
Internet access					
Community and Culture, Library	32296	R223-2	AMD	03/26/2009	2009-3/9
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Money Management Council, Administration	32293	R628-15-12	NSC	02/05/2009	Not Printed
	32367	R628-19	5YR	02/10/2009	2009-5/31
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Judicial Performance Evaluation Commission, Administration	32423	R597-1	NEW	05/01/2009	2009-6/66
	32421	R597-3	NEW	05/01/2009	2009-6/67
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Judicial Performance Evaluation Commission, Administration	32423	R597-1	NEW	05/01/2009	2009-6/66
	32421	R597-3	NEW	05/01/2009	2009-6/67
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Judicial Performance Evaluation Commission, Administration	32423	R597-1	NEW	05/01/2009	2009-6/66
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Human Services, Juvenile Justice Services	32452	R547-6-3	NSC	04/14/2009	Not Printed
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Health, Epidemiology and Laboratory Services, Laboratory Improvement	31910	R444-14	AMD	01/12/2009	2008-18/42
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Natural Resources, Wildlife Resources	32210	R657-61	AMD	02/09/2009	2009-1/40
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Public Safety, Peace Officer Standards and Training	32132	R728-402	AMD	02/05/2009	2008-23/25
	32472	R728-502	5YR	03/30/2009	2009-8/65
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	32350	R307-840	AMD	05/07/2009	2009-5/9
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32088	R722-310	AMD	01/01/2009	2008-22/34
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Tax Commission, Motor Vehicle	32045	R873-22M-20	AMD	01/01/2009	2008-21/88

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Commerce, Occupational and Professional Licensing	32241	R156-1	AMD	02/24/2009	2009-2/2
	32212	R156-31b	AMD	05/01/2009	2009-1/13
	32212	R156-31b	CPR	05/01/2009	2009-6/78
	32365	R156-31b-607	NSC	02/26/2009	Not Printed
	32430	R156-31c	AMD	05/11/2009	2009-7/2
	32411	R156-37-609a	AMD	04/21/2009	2009-6/18
	32236	R156-40-302d	NSC	01/22/2009	Not Printed
	32479	R156-40-302f	NSC	04/14/2009	Not Printed
	32413	R156-42a	5YR	02/26/2009	2009-6/90
	32356	R156-44a	5YR	02/05/2009	2009-5/24
	32398	R156-46a	5YR	02/24/2009	2009-6/91
	32235	R156-46a-302c	NSC	01/22/2009	Not Printed
	32478	R156-49-304	NSC	04/14/2009	Not Printed
	32412	R156-54	AMD	04/21/2009	2009-6/20
	32438	R156-55a	AMD	05/11/2009	2009-7/3
	32477	R156-55d-302a	NSC	04/14/2009	Not Printed
	32001	R156-56	AMD	01/01/2009	2008-21/9
	32476	R156-56-302	NSC	04/14/2009	Not Printed
	32366	R156-61	5YR	02/10/2009	2009-5/25
	32475	R156-63a	NSC	04/14/2009	Not Printed
	32474	R156-63b	NSC	04/14/2009	Not Printed
	32473	R156-64-302a	NSC	04/14/2009	Not Printed
Human Services, Administration, Administrative Services, Licensing	32190	R501-1	NSC	01/12/2009	Not Printed
	32191	R501-4-7	NSC	01/12/2009	Not Printed
	32192	R501-12-8	NSC	01/12/2009	Not Printed
	32193	R501-14	NSC	01/12/2009	Not Printed
Public Safety, Driver License	32502	R708-10	5YR	04/07/2009	2009-9/55
	32504	R708-24	5YR	04/07/2009	2009-9/56
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	32205	R859-1	AMD	05/01/2009	2009-1/42
	32188	R859-1-301	AMD	03/01/2009	2009-1/44
life insurance					
Insurance, Administration	32531	R590-93	5YR	04/15/2009	2009-9/50
life insurance filings					
Insurance, Administration	32467	R590-226	5YR	03/26/2009	2009-8/63
loans					
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	32029	R309-705	AMD	01/28/2009	2008-21/40
Natural Resources, Geological Survey	32330	R638-3	AMD	04/06/2009	2009-4/37

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Medicaid					
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	32225	R414-52	AMD	02/24/2009	2009-2/26
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	32659	R414-60B	EMR	05/18/2009	Not Printed
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	32252	R414-301-4	NSC	01/22/2009	Not Printed
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membrane technology					
Environmental Quality, Drinking Water	32409	R309-530-6	AMD	04/27/2009	2009-6/34
mental retardation					
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midwifery					
Commerce, Occupational and Professional Licensing	32356	R156-44a	5YR	02/05/2009	2009-5/24
mini-COBRA insurance					
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Commerce, Real Estate	32422	R162-211	NEW	04/29/2009	2009-6/24
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	32037	R873-22M-23	AMD	01/01/2009	2008-21/89
Tax Commission, Motor Vehicle Enforcement	32234	R877-23V-7	AMD	03/03/2009	2009-2/36
museum					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	2009-3/89
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Community and Culture, Arts and Museums, Museum Services	32108	R210-100	NEW	01/01/2009	2008-22/21
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Community and Culture, Arts and Museums, Museum Services	32108	R210-100	NEW	01/01/2009	2008-22/21
mutual funds					
Commerce, Securities	32039	R164-15-2	AMD	01/12/2009	2008-21/28
national register					
Community and Culture, History	32244	R212-6	NSC	01/22/2009	Not Printed
NCLB					
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non-traditional					
Health, Health Care Financing, Coverage and Reimbursement Policy	32230	R414-200	AMD	02/24/2009	2009-2/31
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Commerce, Occupational and Professional Licensing	32212	R156-31b	AMD	05/01/2009	2009-1/13
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	32365	R156-31b-607	NSC	02/26/2009	Not Printed
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Commerce, Occupational and Professional Licensing	32241	R156-1	AMD	02/24/2009	2009-2/2
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Labor Commission, Adjudication	32278	R602-8	NEW	03/10/2009	2009-3/57
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Commerce, Occupational and Professional Licensing	32413	R156-42a	5YR	02/26/2009	2009-6/90
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Environmental Quality, Drinking Water	32410	R309-545-15	AMD	04/27/2009	2009-6/36
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Environmental Quality, Air Quality	32656	R307-840	5YR	05/07/2009	Not Printed
	32350	R307-840	AMD	05/07/2009	2009-5/9
paleontological resources					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	2009-3/89
paraprofessional qualifications					
Education, Administration	32267	R277-524	5YR	01/05/2009	2009-3/84
parks					
Natural Resources, Parks and Recreation	32339	R651-633-2	AMD	03/26/2009	2009-4/41
	32338	R651-636	NEW	03/26/2009	2009-4/42
parole					
Human Services, Juvenile Justice Services	32452	R547-6-3	NSC	04/14/2009	Not Printed
Pardons (Board Of), Administration	32067	R671-201	AMD	02/25/2009	2008-22/29
	32066	R671-405	AMD	02/25/2009	2008-22/33
PCN					
Health, Health Care Financing, Coverage and Reimbursement Policy	32187	R414-320	AMD	01/22/2009	2008-24/15
performance evaluations					
Judicial Performance Evaluation Commission, Administration	32423	R597-1	NEW	05/01/2009	2009-6/66
performance measurement					
Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21
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Environmental Quality, Water Quality	32380	R317-1	AMD	04/07/2009	2009-5/11
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	32420	R657-62	NEW	04/21/2009	2009-6/70
personal property					
Tax Commission, Property Tax	32260	R884-24P-19	AMD	03/03/2009	2009-2/39
	32233	R884-24P-24	AMD	03/03/2009	2009-2/42
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pesticides Agriculture and Food, Plant Industry	32332	R68-7	AMD	03/26/2009	2009-4/4
physically handicapped Public Service Commission, Administration	32232	R746-343-3	AMD	03/03/2009	2009-2/35
physicians Public Safety, Driver License	32202	R708-7-10	AMD	02/19/2009	2009-1/41
police training Public Safety, Peace Officer Standards and Training	32132	R728-402	AMD	02/05/2009	2008-23/25
policy Education, Administration	32141	R277-495	NEW	01/07/2009	2008-23/3
preferred provider organization Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21
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private security officers Commerce, Occupational and Professional Licensing	32475	R156-63a	NSC	04/14/2009	Not Printed
professional competency Education, Administration	32142	R277-502	AMD	01/07/2009	2008-23/5
	32450	R277-502-4	AMD	05/08/2009	2009-7/15
professional education Education, Administration	32143	R277-518	AMD	01/07/2009	2008-23/7
professional engineers Commerce, Occupational and Professional Licensing	32364	R156-22-102	AMD	04/07/2009	2009-5/3
professional land surveyors Commerce, Occupational and Professional Licensing	32364	R156-22-102	AMD	04/07/2009	2009-5/3
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Tax Commission, Property Tax	32260	R884-24P-19	AMD	03/03/2009	2009-2/39
	32233	R884-24P-24	AMD	03/03/2009	2009-2/42
	32063	R884-24P-27	AMD	01/01/2009	2008-21/90
	32036	R884-24P-47	AMD	01/01/2009	2008-21/92
	32044	R884-24P-53	AMD	01/01/2009	2008-21/93
	32052	R884-24P-70	AMD	01/01/2009	2008-21/97
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Natural Resources, Wildlife Resources	32210	R657-61	AMD	02/09/2009	2009-1/40
protection					
Commerce, Consumer Protection	32382	R152-21	5YR	02/17/2009	2009-5/24
PSD					
Environmental Quality, Air Quality	32354	R307-405	5YR	02/05/2009	2009-5/28
	32042	R307-405-2	AMD	02/05/2009	2008-21/33
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Commerce, Occupational and Professional Licensing	32366	R156-61	5YR	02/10/2009	2009-5/25
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	32265	R277-437	5YR	01/05/2009	2009-3/83
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	32256	R277-462	AMD	02/24/2009	2009-2/16
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Community and Culture, Library	32296	R223-2	AMD	03/26/2009	2009-3/9
public schools					
Education, Administration	32650	R277-916	5YR	05/04/2009	Not Printed
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Public Service Commission, Administration	32434	R746-360-5	AMD	05/12/2009	2009-7/34
	32283	R746-365	5YR	01/06/2009	2009-3/88
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Transportation, Program Development	32179	R926-10	AMD	02/19/2009	2008-24/32
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Environmental Quality, Drinking Water	32169	R309-540-6	AMD	02/15/2009	2008-24/5
radioactive material					
Environmental Quality, Radiation Control	32050	R313-21	CPR	02/11/2009	2008-24/38
radioactive materials					
Environmental Quality, Radiation Control	32050	R313-21	AMD	02/11/2009	2008-21/47
	32206	R313-22-75	AMD	02/12/2009	2009-1/27
	32207	R313-32	AMD	02/12/2009	2009-1/30
radiology practical technicians					
Commerce, Occupational and Professional Licensing	32412	R156-54	AMD	04/21/2009	2009-6/20
radiology technologists					
Commerce, Occupational and Professional Licensing	32412	R156-54	AMD	04/21/2009	2009-6/20
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Environmental Quality, Radiation Control	32207	R313-32	AMD	02/12/2009	2009-1/30
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Labor Commission, Industrial Accidents	32054	R612-4-2	AMD	01/01/2009	2008-21/66
Public Service Commission, Administration	32232	R746-343-3	AMD	03/03/2009	2009-2/35
real estate appraisals					
Commerce, Real Estate	31998	R162-103	AMD	01/01/2009	2008-21/23
real estate business					
Commerce, Real Estate	32115	R162-2-2	AMD	01/08/2009	2008-22/19
	32248	R162-6	AMD	03/02/2009	2009-2/8
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Human Services, Recovery Services	32159	R527-5	R&R	01/21/2009	2008-24/27
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	32358	R35-2	NSC	02/26/2009	Not Printed
	32359	R35-4	NSC	02/26/2009	Not Printed
	32360	R35-5	NSC	02/26/2009	Not Printed
	32361	R35-6	NSC	02/26/2009	Not Printed
records fees					
Human Services, Recovery Services	32159	R527-5	R&R	01/21/2009	2008-24/27
recreation					
Natural Resources, Wildlife Resources	32309	R657-38	AMD	03/10/2009	2009-3/62
recreation therapy					
Commerce, Occupational and Professional Licensing	32236	R156-40-302d	NSC	01/22/2009	Not Printed
	32479	R156-40-302f	NSC	04/14/2009	Not Printed
recreational therapy					
Commerce, Occupational and Professional Licensing	32236	R156-40-302d	NSC	01/22/2009	Not Printed
	32479	R156-40-302f	NSC	04/14/2009	Not Printed
rehabilitation					
Education, Rehabilitation	32271	R280-202	5YR	01/05/2009	2009-3/86
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Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
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Human Services, Administration	32154	R495-888	NEW	01/21/2009	2008-24/18
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Tax Commission, Auditing	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
	32017	R865-19S-27	AMD	01/01/2009	2008-21/81
	32030	R865-19S-29	AMD	01/01/2009	2008-21/82
	32007	R865-19S-90	AMD	01/01/2009	2008-21/83
	32016	R865-19S-92	AMD	01/01/2009	2008-21/84
	32012	R865-19S-113	AMD	01/01/2009	2008-21/85
	32013	R865-19S-119	AMD	01/01/2009	2008-21/86
renewable					
Natural Resources, Geological Survey	32331	R638-2	AMD	04/06/2009	2009-4/29
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Public Service Commission, Administration	32306	R746-350	5YR	01/14/2009	2009-3/88
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Health, Community and Family Health Services, Children with Special Health Care Needs	32158	R398-10	NSC	03/19/2009	Not Printed
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Education, Administration	32448	R277-484	AMD	05/08/2009	2009-7/10
Environmental Quality, Air Quality	32353	R307-150	5YR	02/05/2009	2009-5/28
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Education, Administration	32448	R277-484	AMD	05/08/2009	2009-7/10
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Tax Commission, Auditing	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
	32032	R865-12L-12	AMD	01/01/2009	2008-21/79
	32015	R865-12L-13	AMD	01/01/2009	2008-21/79
retirement					
Human Resource Management, Administration	32424	R477-12-3	AMD	04/21/2009	2009-6/55
	32427	R477-12-3	EMR	03/02/2009	2009-6/87
RFPs					
Education, Administration	32255	R277-117	NEW	02/24/2009	2009-2/15
	32400	R277-117-2	NSC	03/14/2009	Not Printed
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Transportation, Administration	31961	R907-64	AMD	01/12/2009	2008-20/25
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Education, Administration	32372	R277-102	5YR	02/13/2009	2009-5/26
safety					
Labor Commission, Occupational Safety and Health	32216	R614-1-4	NSC	01/13/2009	Not Printed
	32481	R614-1-4	NSC	04/14/2009	Not Printed
Labor Commission, Safety	32259	R616-2-3	AMD	02/24/2009	2009-2/34
Transportation, Motor Carrier	32264	R909-3	NSC	01/05/2009	Not Printed
	32274	R909-3	5YR	01/05/2009	2009-3/89
	32273	R909-3-2	NSC	02/05/2009	Not Printed
safety regulations					
Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
salary adjustments					
Education, Administration	32140	R277-110-1	AMD	01/07/2009	2008-23/2
sales tax					
Tax Commission, Auditing	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
	32032	R865-12L-12	AMD	01/01/2009	2008-21/79
	32015	R865-12L-13	AMD	01/01/2009	2008-21/79
	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
	32017	R865-19S-27	AMD	01/01/2009	2008-21/81
	32030	R865-19S-29	AMD	01/01/2009	2008-21/82

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	32016	R865-19S-92	AMD	01/01/2009	2008-21/84
	32012	R865-19S-113	AMD	01/01/2009	2008-21/85
	32013	R865-19S-119	AMD	01/01/2009	2008-21/86
scholarships					
Education, Administration	32418	R277-701-7	AMD	04/21/2009	2009-6/26
school					
Education, Administration	32375	R277-601	5YR	02/13/2009	2009-5/27
school boards					
Education, Administration	32254	R277-101	AMD	02/24/2009	2009-2/13
school buses					
Transportation, Motor Carrier	32264	R909-3	NSC	01/05/2009	Not Printed
	32274	R909-3	5YR	01/05/2009	2009-3/89
	32273	R909-3-2	NSC	02/05/2009	Not Printed
school community councils					
Education, Administration	32449	R277-491	AMD	05/08/2009	2009-7/13
school transportation					
Education, Administration	32375	R277-601	5YR	02/13/2009	2009-5/27
schools					
Education, Administration	32447	R277-477	AMD	05/08/2009	2009-7/6
Natural Resources, Geological Survey	32330	R638-3	AMD	04/06/2009	2009-4/37
SDWA					
Environmental Quality, Drinking Water	32029	R309-705	AMD	01/28/2009	2008-21/40
search and rescue					
Public Safety, Homeland Security	32305	R704-1	NSC	02/05/2009	Not Printed
secondary disinfectants					
Environmental Quality, Drinking Water	32407	R309-520	AMD	04/27/2009	2009-6/32
securities					
Commerce, Securities	32039	R164-15-2	AMD	01/12/2009	2008-21/28
Money Management Council, Administration	32367	R628-19	5YR	02/10/2009	2009-5/31
securities regulation					
Commerce, Securities	32039	R164-15-2	AMD	01/12/2009	2008-21/28
Money Management Council, Administration	32293	R628-15-12	NSC	02/05/2009	Not Printed
	32294	R628-16-12	NSC	02/05/2009	Not Printed
security guards					
Commerce, Occupational and Professional Licensing	32475	R156-63a	NSC	04/14/2009	Not Printed
	32474	R156-63b	NSC	04/14/2009	Not Printed
sedimentation					
Environmental Quality, Drinking Water	32408	R309-525-11	AMD	04/27/2009	2009-6/33

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senior-specific insurance designations Insurance, Administration	32261	R590-252	NEW	02/25/2009	2009-2/32
sentencing Pardons (Board Of), Administration	32066	R671-405	AMD	02/25/2009	2008-22/33
services Public Service Commission, Administration	32306	R746-350	5YR	01/14/2009	2009-3/88
settlements Labor Commission, Adjudication	32276	R602-2-2	AMD	03/10/2009	2009-3/51
	32277	R602-7	NEW	03/10/2009	2009-3/52
	32278	R602-8	NEW	03/10/2009	2009-3/57
sewerage Environmental Quality, Water Quality	32381	R317-5-1	AMD	04/07/2009	2009-5/16
SLCC Regents (Board Of), Salt Lake Community College	32433	R784-1	5YR	03/09/2009	2009-7/38
slow sand filtration Environmental Quality, Drinking Water	32409	R309-530-6	AMD	04/27/2009	2009-6/34
social services Human Services, Administration, Administrative Hearings	32328	R497-100	NSC	02/25/2009	Not Printed
	32181	R497-100	AMD	01/21/2009	2008-24/21
solar Natural Resources, Geological Survey	32331	R638-2	AMD	04/06/2009	2009-4/29
solid waste management Environmental Quality, Solid and Hazardous Waste	32378	R315-320	5YR	02/17/2009	2009-5/29
source development Environmental Quality, Drinking Water	32168	R309-515-7	AMD	02/15/2009	2008-24/3
source maintenance Environmental Quality, Drinking Water	32168	R309-515-7	AMD	02/15/2009	2008-24/3
source material Environmental Quality, Radiation Control	32050	R313-21	CPR	02/11/2009	2008-24/38
source materials Environmental Quality, Radiation Control	32050	R313-21	AMD	02/11/2009	2008-21/47
special fuel Tax Commission, Auditing	32334	R865-4D-2	AMD	03/26/2009	2009-4/51
	32035	R865-4D-2	AMD	01/01/2009	2008-21/76
	32335	R865-4D-6	AMD	03/26/2009	2009-4/52
	32336	R865-4D-24	AMD	03/26/2009	2009-4/53

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specific licenses					
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speech-language pathology services					
Health, Health Care Financing, Coverage and Reimbursement Policy	32432	R414-54	5YR	03/09/2009	2009-7/36
	32227	R414-54	AMD	02/24/2009	2009-2/28
	32326	R414-54-3	AMD	04/01/2009	2009-4/27
standards					
Health, Administration	31980	R380-70	NEW	02/04/2009	2008-20/12
state flag					
Lieutenant Governor, Administration	32501	R622-2	5YR	04/07/2009	2009-9/53
state plan					
Lieutenant Governor, Elections	32513	R623-3	5YR	04/07/2009	2009-9/54
state records committee					
Administrative Services, Records Committee	32355	R35-1-4	NSC	02/26/2009	Not Printed
	32358	R35-2	NSC	02/26/2009	Not Printed
	32359	R35-4	NSC	02/26/2009	Not Printed
	32360	R35-5	NSC	02/26/2009	Not Printed
	32361	R35-6	NSC	02/26/2009	Not Printed
state register					
Community and Culture, History	32244	R212-6	NSC	01/22/2009	Not Printed
stock brokers					
Money Management Council, Administration	32294	R628-16-12	NSC	02/05/2009	Not Printed
storage tanks					
Environmental Quality, Drinking Water	32410	R309-545-15	AMD	04/27/2009	2009-6/36
stream alterations					
Natural Resources, Water Rights	32368	R655-13	5YR	02/11/2009	2009-5/31
student participation					
Education, Administration	32220	R277-494-3	NSC	01/22/2009	Not Printed
	32323	R277-494-3	NSC	02/25/2009	Not Printed
student teachers					
Education, Administration	32311	R277-509	AMD	03/10/2009	2009-3/12
students at risk					
Education, Administration	32219	R277-464-4	NSC	01/22/2009	Not Printed
supervision					
Commerce, Occupational and Professional Licensing	32241	R156-1	AMD	02/24/2009	2009-2/2
surveyors					
Commerce, Occupational and Professional Licensing	32364	R156-22-102	AMD	04/07/2009	2009-5/3

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surveys					
Judicial Performance Evaluation Commission, Administration	32421	R597-3	NEW	05/01/2009	2009-6/67
tax credits					
Environmental Quality, Air Quality	31928	R307-121	AMD	01/01/2009	2008-19/25
	32275	R307-121	5YR	01/06/2009	2009-3/86
Natural Resources, Geological Survey	32331	R638-2	AMD	04/06/2009	2009-4/29
tax exemptions					
Tax Commission, Auditing	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
	32017	R865-19S-27	AMD	01/01/2009	2008-21/81
	32030	R865-19S-29	AMD	01/01/2009	2008-21/82
	32007	R865-19S-90	AMD	01/01/2009	2008-21/83
	32016	R865-19S-92	AMD	01/01/2009	2008-21/84
	32012	R865-19S-113	AMD	01/01/2009	2008-21/85
	32013	R865-19S-119	AMD	01/01/2009	2008-21/86
taxation					
Tax Commission, Auditing	32334	R865-4D-2	AMD	03/26/2009	2009-4/51
	32035	R865-4D-2	AMD	01/01/2009	2008-21/76
	32335	R865-4D-6	AMD	03/26/2009	2009-4/52
	32336	R865-4D-24	AMD	03/26/2009	2009-4/53
	32392	R865-7H	5YR	02/19/2009	2009-6/93
	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
	32032	R865-12L-12	AMD	01/01/2009	2008-21/79
	32015	R865-12L-13	AMD	01/01/2009	2008-21/79
	32033	R865-21U-3	AMD	01/01/2009	2008-21/87
	32010	R865-21U-15	AMD	01/01/2009	2008-21/87
Tax Commission, Motor Vehicle	32045	R873-22M-20	AMD	01/01/2009	2008-21/88
	32037	R873-22M-23	AMD	01/01/2009	2008-21/89
Tax Commission, Motor Vehicle Enforcement	32234	R877-23V-7	AMD	03/03/2009	2009-2/36
Tax Commission, Property Tax	32260	R884-24P-19	AMD	03/03/2009	2009-2/39
	32233	R884-24P-24	AMD	03/03/2009	2009-2/42
	32063	R884-24P-27	AMD	01/01/2009	2008-21/90
	32036	R884-24P-47	AMD	01/01/2009	2008-21/92
	32044	R884-24P-53	AMD	01/01/2009	2008-21/93
	32052	R884-24P-70	AMD	01/01/2009	2008-21/97
teacher preparation programs					
Education, Administration	32311	R277-509	AMD	03/10/2009	2009-3/12
telecommunications					
Public Service Commission, Administration	32232	R746-343-3	AMD	03/03/2009	2009-2/35
	32306	R746-350	5YR	01/14/2009	2009-3/88
	32434	R746-360-5	AMD	05/12/2009	2009-7/34
	32283	R746-365	5YR	01/06/2009	2009-3/88

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textbooks					
Education, Administration	32417	R277-433	AMD	04/21/2009	2009-6/25
tickets					
Administrative Services, Fleet Operations	32292	R27-7	AMD	04/20/2009	2009-3/2
title					
Insurance, Title and Escrow Commission	32167	R592-13	NEW	01/22/2009	2008-24/31
tolls					
Transportation, Program Development	32179	R926-10	AMD	02/19/2009	2008-24/32
towing					
Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
traffic noise abatement					
Transportation, Preconstruction	32000	R930-3	AMD	01/12/2009	2008-21/98
Transition to Adult Living					
Human Services, Child and Family Services	32658	R512-306	5YR	05/07/2009	Not Printed
transportation					
Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
Transportation, Program Development	32179	R926-10	AMD	02/19/2009	2008-24/32
Transportation, Preconstruction	32000	R930-3	AMD	01/12/2009	2008-21/98
Transportation Infrastructure Loan Fund					
Transportation Commission, Administration	31920	R940-3	NEW	01/12/2009	2008-18/62
Transportation Infrastructure Loan Fund Fund					
Transportation Commission, Administration	32082	R940-3-2	NSC	01/12/2009	Not Printed
trauma					
Health, Health Systems Improvement, Emergency Medical Services	32084	R426-5-4	AMD	02/24/2009	2008-22/25
trucks					
Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
trust lands funds					
Education, Administration	32447	R277-477	AMD	05/08/2009	2009-7/6
unarmed combat					
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	32205	R859-1	AMD	05/01/2009	2009-1/42
	32188	R859-1-301	AMD	03/01/2009	2009-1/44
unemployment compensation					
Workforce Services, Unemployment Insurance	32242	R994-204-402	NSC	01/22/2009	Not Printed
universal service					
Public Service Commission, Administration	32434	R746-360-5	AMD	05/12/2009	2009-7/34
used oil					
Environmental Quality, Solid and Hazardous Waste	32231	R315-15-13	NSC	01/22/2009	Not Printed

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user tax					
Tax Commission, Auditing	32033	R865-21U-3	AMD	01/01/2009	2008-21/87
	32010	R865-21U-15	AMD	01/01/2009	2008-21/87
utah.gov					
Technology Services, Administration	32498	R895-4	5YR	04/06/2009	2009-9/57
victim compensation					
Crime Victim Reparations, Administration	32180	R270-1-14	AMD	01/21/2009	2008-24/3
	31950	R270-1-19	CPR	01/21/2009	2008-24/37
	31950	R270-1-19	AMD	01/21/2009	2008-19/13
victims of crime					
Crime Victim Reparations, Administration	32180	R270-1-14	AMD	01/21/2009	2008-24/3
	31950	R270-1-19	CPR	01/21/2009	2008-24/37
	31950	R270-1-19	AMD	01/21/2009	2008-19/13
voting					
Lieutenant Governor, Elections	32512	R623-2	5YR	04/07/2009	2009-9/54
waste disposal					
Environmental Quality, Solid and Hazardous Waste	32378	R315-320	5YR	02/17/2009	2009-5/29
Environmental Quality, Water Quality	32380	R317-1	AMD	04/07/2009	2009-5/11
wastewater					
Environmental Quality, Water Quality	32342	R317-3-1	AMD	04/07/2009	2009-4/18
water conservation					
Environmental Quality, Drinking Water	32406	R309-510	AMD	04/27/2009	2009-6/28
water pollution					
Environmental Quality, Water Quality	32380	R317-1	AMD	04/07/2009	2009-5/11
	31650	R317-2	CPR	01/12/2009	2008-23/28
	31650	R317-2	AMD	01/12/2009	2008-14/30
	32342	R317-3-1	AMD	04/07/2009	2009-4/18
	32381	R317-5-1	AMD	04/07/2009	2009-5/16
	32340	R317-8	AMD	04/07/2009	2009-4/21
water quality					
Environmental Quality, Water Quality	32342	R317-3-1	AMD	04/07/2009	2009-4/18
water quality standards					
Environmental Quality, Water Quality	31650	R317-2	CPR	01/12/2009	2008-23/28
	31650	R317-2	AMD	01/12/2009	2008-14/30
water rights					
Natural Resources, Water Rights	32201	R655-14	AMD	02/10/2009	2009-1/35
white-collar contests					
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	32205	R859-1	AMD	05/01/2009	2009-1/42
	32188	R859-1-301	AMD	03/01/2009	2009-1/44

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wildlife					
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	32462	R657-5-73	NSC	04/14/2009	Not Printed
	32129	R657-13	AMD	01/07/2009	2008-23/23
	32300	R657-17-4	AMD	03/10/2009	2009-3/61
	32319	R657-33-19	AMD	03/24/2009	2009-4/50
	32309	R657-38	AMD	03/10/2009	2009-3/62
	32371	R657-42-4	AMD	04/07/2009	2009-5/19
	32299	R657-44-3	AMD	03/10/2009	2009-3/69
	32297	R657-55-4	AMD	03/10/2009	2009-3/71
	32081	R657-60-2	AMD	01/07/2009	2008-22/28
	32298	R657-60-2	AMD	03/10/2009	2009-3/72
	32210	R657-61	AMD	02/09/2009	2009-1/40
	32420	R657-62	NEW	04/21/2009	2009-6/70
wildlife conservation					
Natural Resources, Wildlife Resources	32309	R657-38	AMD	03/10/2009	2009-3/62
wildlife law					
Natural Resources, Wildlife Resources	32129	R657-13	AMD	01/07/2009	2008-23/23
	32081	R657-60-2	AMD	01/07/2009	2008-22/28
	32298	R657-60-2	AMD	03/10/2009	2009-3/72
wildlife permits					
Natural Resources, Wildlife Resources	32297	R657-55-4	AMD	03/10/2009	2009-3/71
work-based learning programs					
Education, Administration	32650	R277-916	5YR	05/04/2009	Not Printed
workers' compensation					
Labor Commission, Adjudication	32276	R602-2-2	AMD	03/10/2009	2009-3/51
Labor Commission, Industrial Accidents	32054	R612-4-2	AMD	01/01/2009	2008-21/66