

# UTAH STATE BULLETIN

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

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Division of Administrative Rules, Salt Lake City 84114

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## NOTICES OF PROPOSED RULES

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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 15, 2006, 12:00 a.m., and May 1, 2006, 11:59 p.m. are included in this, the May 15, 2006, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least June 14, 2006. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through September 12, 2006, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

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

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

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28702

FILED: 05/01/2006, 15:52

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being revised as the result of a division review of current reimbursement rates and practices. The review showed the following: 1) because Finance adopts the federal mileage rate as the state reimbursement rate for a private vehicle if a fleet vehicle is not available to the employee, Finance needs to increase the state mileage reimbursement rate. Although the federal government changed its rate in January 2006, Finance changes the state rate only once a year, at the beginning of the fiscal year; 2) because the Division of Fleet Operations has determined that their cost of operating a fleet vehicle has not changed, Finance does not need to increase the reimbursement rate for an employee who chooses to drive a private vehicle when a state fleet vehicle is available; 3) because the current standard lodging maximum reimbursement rate is no longer sufficient for several locations, such as Ephriam, Logan, Roosevelt, and Vernal, and because the lodging rates for most of the state's larger cities are already above the standard lodging rate, the standard maximum reimbursement rate is being increased from \$55 to \$60 per night. The rates for other areas that are already above \$60, Moab, Cedar City, St. George, metropolitan Salt Lake City (Draper to Centerville), Ogden, Layton, Park City, Tooele, Heber City, Midway, and Provo/Orem will remain the same. Price, UT will no longer need to be listed as an exception so it is being eliminated from the list; and 4) a correction needs to be made changing the word "dinner" to "lunch" in Subsection R25-7-6(4)(b)(iii). Subsection R25-7-6(4)(b)(iii) should state: "If dinner is provided deduct \$23, leaving a premium allowance for breakfast and lunch of actual up to \$27."

SUMMARY OF THE RULE OR CHANGE: The rule was amended to: 1) change the reimbursement rate for private vehicle mileage to 44-1/2 cents per mile, the federal mileage rate, when a state fleet vehicle is not available to the employee; 2) increase the lodging for nonconference hotels from \$55 per night plus tax to \$60 per night plus tax; 3) eliminate Price, UT from the exceptions for the nonconference hotel list; and 4) correct an error in Section R25-7-6.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Amending this rule will result in a cost to the state budget. State agencies will spend more to reimburse some travel expenses. They will spend four cents

more for each private vehicle mile they reimburse when a fleet vehicle is not available to the employee. They will also spend \$5 more per night when they reimburse lodging for cities other than those shown as being exceptions. Finance does not know how many state employees agencies will reimburse for mileage when a fleet vehicle is not available. Finance does not know how many total miles agencies will reimburse. Finance does not know how many nights lodging to cities other than the exceptions that the agencies will reimburse. Finance does not know how many employees will use the rule for premium cities allowance.

❖ LOCAL GOVERNMENTS: This rule applies only to state agencies and state employees and, therefore, will have no impact on local government.

❖ OTHER PERSONS: The amendments to this rule may result in additional reimbursement (savings) to employees who travel on business. Employees who drive a personal vehicle for business will receive four cents more per mile driven when a fleet vehicle is not available. Employees will now receive \$5 more for each night's lodging in cities other than those listed as exceptions. Finance cannot anticipate the aggregate savings or cost impact on employees for the following reasons: 1) Finance does not know how many state employees will receive a mileage reimbursement when a fleet vehicle is not available; 2) Finance does not know how many total miles those employees will drive; and 3) Finance does not know how many nights lodging to cities other than the exceptions that the agencies will reimburse.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with revisions to Rule R25-7. If an agency chooses to permit employees to travel, any other costs resulting from compliance with these amendments will be paid by the agency, not by employees (the affected persons). In fact, employees who are allowed to travel will actually receive additional reimbursement as a result of the amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments to Rule R25-7 apply only to state agencies and state employees and have no impact on businesses. D'Arcy Dixon Pignanelli, 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:

Nanette Moyar at the above address, by phone at 801-538-3020, by FAX at 801-538-3244, or by Internet E-mail at nmoyar@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: John Reidhead, Director

**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Employees.**

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$30.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$6.00
Lunch	\$9.00
Dinner	\$15.00
Total	\$30.00

(b) The daily travel meal allowance for out-of-state travel is \$38.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$9.00
Lunch	\$11.00
Dinner	\$18.00
Total	\$38.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$50 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the \$50 premium allowance as follows:

(i) If breakfast is provided deduct \$12, leaving a premium allowance for lunch and dinner of actual up to \$38.

(ii) If lunch is provided deduct \$15, leaving a premium allowance for breakfast and dinner of actual up to \$35.

(iii) If dinner is provided deduct \$23, leaving a premium allowance for breakfast and ~~dinner~~ lunch of actual up to \$27.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, he must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day he leaves his home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:01-6:00 *B, L, D In-State	2nd Quarter a.m. 6:01-noon *L, D	3rd Quarter p.m. 12:01-6:00 *D	4th Quarter p.m. 6:01-midnight *no meals
\$30.00	\$24.00	\$15.00	\$0
Out-of-State \$38.00	\$29.00	\$18.00	\$0

\*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day he returns to his home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:01-6:00 *no meals	2nd Quarter a.m. 6:01-noon *B	3rd Quarter p.m. 12:01-7:00 *B, L	4th Quarter p.m. 7:01-midnight *B, L, D
In-State \$0	\$6.00	\$15.00	\$30.00
Out-of-State \$0	\$9.00	\$20.00	\$38.00

\*B=Breakfast, L=Lunch, D=Dinner

(7) An employee may be authorized by his Department Director or designee to receive a meal allowance when his destination is at least 100 miles from his home base and he does not stay overnight.

(a) Breakfast is paid when the employee leaves his home base before 6:01 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves his home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves his home base and returns after 7 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

#### **R25-7-8. Reimbursement for Lodging.**

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

(1) Lodging is reimbursed for single occupancy only.

(2) For non-conference hotel in-state travel, where the department/traveler makes reservations through the State Travel Agency, the state will reimburse the actual cost up to \$~~55~~60 per night plus tax except in Moab, Cedar City, St. George, metropolitan Salt Lake City (Draper to Centerville), Ogden, Layton, Park City, Tooele, Heber City, Midway, ~~Price~~ and Provo/Orem. In these areas, the rates are:

(a) Moab, Cedar City, and St. George - \$65 per night plus tax

(b) Metropolitan Salt Lake City (Draper to Centerville), Park City, Tooele, Heber City, and Midway - \$68 per night plus tax

(c) Ogden, Layton, and Provo/Orem - \$63 per night plus tax

~~(d) Price - \$60 per night plus tax~~  
(3) The state will reimburse the actual cost per night plus tax for out-of-state travel where the department/traveler makes reservations through the State Travel Agency.

(4) The same rates apply for in-state travel for stays at a non-conference hotel where the department/traveler makes their own reservations.

(5) For out-of-state travel, the state will reimburse the actual cost up to \$65 per night plus tax.

(6) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(7) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(8) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the MasterCard Corporate charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

(9) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$20 per night with no receipts required or

(ii) Actual cost up to \$30 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(10) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

#### **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, 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 prior 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 32 cents per mile, or ~~40~~44 1/2 cents per mile if a state fleet vehicle is not available to the employee.

(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 approved 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 32 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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 Agency, 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 travel agency 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 50 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 16 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, 2005~~ 2006

**Notice of Continuation:** May 1, 2003

**Authorizing, and Implemented or Interpreted Law:** 63A-3-107; 63A-3-106

## Administrative Services, Risk Management **R37-4**

### Adjusted Utah Governmental Immunity Limitations on Judgments

#### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 28667

FILED: 04/21/2006, 16:50

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Subsection 63-30d-604(4)(b) requires the Utah State Risk Manager to calculate and establish, every other year, new limitations on judgments based on increases or decreases to the Consumer Price Index (CPI) and to submit these changes in administrative rule. The rule reflects the calculations of the changes in the CPI. The increase in the CPI is reflected in an increase in the maximum dollar amounts that the court can award in cases involving the State of Utah and local government entities. A 5.5% increase in the CPI is reflected in this rule.

**SUMMARY OF THE RULE OR CHANGE:** The substantive difference between the old rule and the new rule are as follows. This rulemaking changes the calendar years that the CPI is based upon to 2003 and 2005. Also, the rulemaking will increase the maximum dollar amount that the courts can award in judgment against a Utah governmental entity. The CPI increase is 5.5%. This increase means that one person in any one occurrence can be awarded \$583,900. If the case involves two or more persons in any one occurrence, the maximum amount that can be awarded is \$1,167,900. In addition, a new section, R37-4-3, establishes the limitations of judgments by calendar date and dollar amount for easy reference.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63-30d-604(4)(b)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The implementation of this rule will result in the maximum amount that a court can award for one person in any one occurrence to increase by \$30,400 or a maximum of \$583,900. The implementation of this rule will

also result in an increase of \$60,900 to the maximum that a court can award to two or more persons in any one occurrence. The maximum will increase from \$1,107,000 to \$1,167,900. These changes will result in higher costs to the State.

❖ LOCAL GOVERNMENTS: The increases in local governments will be the same as for State government. The caps on awards will increase from \$553,500 for one person in any one occurrence to \$583,900 and from \$1,107,000 for two or more persons in any one occurrence to \$1,167,900. These changes will likely result in higher costs to local governments.

❖ OTHER PERSONS: No impact because the rule only applies to entities covered by the Utah Governmental Immunity Act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact because the rule only applies to entities covered by the Utah Governmental Immunity Act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no impact on business. D'Arcy Dixon Pignanelli, Executive Director

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

ADMINISTRATIVE SERVICES  
RISK MANAGEMENT  
Room 5120 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:

Stephen Hewlett at the above address, by phone at 801-538-9572, by FAX at 801-538-9597, or by Internet E-mail at SHEWLETT@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Roger Livingston, Director

**R37. Administrative Services, Risk Management.  
R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.**

**R37-4-1. Authority and Calculation Process.**

~~— Pursuant to UCA 63-30-34(4)(b) the Risk Manager hereby establishes a new limitation of judgment.~~

~~— Accordingly, the Risk Manager has calculated the consumer price index for calendar years 1999 and 2001 using standards provided in Sections 1(f)(4) and 1(f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all urban consumers published by the Department of Labor. By applying these standards, the consumer price index for calendar year~~

~~1999 is calculated to be 165.14 and the index for 2001 is 175.88. The percentage difference between the 1999 index and the 2001 index was then computed to be 6.5%.~~

**R37-4-2. New Limitation of Judgement Amounts.**

~~— As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63-30-34(1) has been increased as follows, and is effective September 23, 2002:~~

~~— 1) In accordance with UCA 63-30-34(1)(a), the limit for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is \$532,500 for one person in any one occurrence (instead of \$500,000), or \$1,065,000 for two or more persons in any one occurrence (instead of \$1,000,000);~~

~~— 2) In accordance with UCA 63-30-34(1)(b), the limit for damages for injury or death to one person is \$532,500, (instead of \$500,000) regardless of whether or not the function giving rise to the injury is characterized as governmental; and~~

~~— 3) In accordance with UCA 63-30-34(1)(c), the limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is \$213,000 in any one occurrence (instead of \$200,000).]~~

**R37-4-1. Authority and Calculation Process.**

~~Pursuant to UCA 63-30d-604(4)(b) the Risk Manager hereby establishes a new limitation of judgment.~~

~~Accordingly, the Risk Manager has calculated the consumer price index (CPI) for calendar years 2003 and 2005 using the standards provided in Sections 1(f)(4) and 1(f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all-urban consumers published by the Department of Labor. By applying these standards, the consumer price index for the calendar year 2003 is calculated to be 182.75 and the index for 2005 is 192.77. The percentage difference between the 2003 index and the 2005 index was then computed to be 5.5%.~~

**R37-4-2. New Limitation of Judgment Amounts.**

~~As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63-30d-604(1)(a) has been increased as follows, and is effective July 1, 2006:~~

~~1) In accordance with UCA 63-30d-604(1)(a), the limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify is \$583,900 for one person in any one occurrence (instead of \$553,500), or \$1,167,900 for two or more persons in any one occurrence (instead of \$1,107,000);~~

~~2) In accordance with UCA 63-30d-604(1)(b), the limit for damages for injury or death is \$583,900, (instead of \$553,500) regardless of whether or not the function giving rise to the injury is characterized as governmental; and~~

~~3) In accordance with UCA 63-30d-604(1)(c), the limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental~~

entity, or an employee whom a governmental entity has a duty to indemnify is \$233,600 in any one occurrence (instead of \$221,400).

### **R37-4-3. Limitations of Judgments by Calendar Date.**

The limitation on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

1) Incident(s) occurring before July 1, 2001 - \$250,000 for one person in an occurrence, \$500,000 for two or more persons in an occurrence; and \$100,000 for property damage for any one occurrence as explained in R37-4-2(3).

2) Incident(s) occurring on or after July 1, 2001 - \$500,000 for one person in an occurrence, \$1,000,000 for two or more persons in an occurrence; and \$200,000 for property damage for any one occurrence as explained in R37-4-2(3).

3) Incident(s) occurring on or after July 1, 2002 - \$532,000 for one person in an occurrence, \$1,065,000 for two or more persons in an occurrence; and \$213,000 for property damage for any one occurrence as explained in R37-4-2(3).

4) Incident(s) occurring on or after July 1, 2004 - \$553,500 for one person in an occurrence, \$1,107,000 for two or more persons in an occurrence, and \$221,400 for property damage for any one occurrence as explained in R37-4-2(3).

5) Incident(s) occurring on or after July 1, 2006 - \$583,900 for one person in an occurrence, \$1,167,900 for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(3).

**KEY: limitation on judgments, risk management, governmental immunity act caps**

**Date of Enactment or Last Substantive Amendment:** ~~November 16, 2002~~ **2006**

**Authorizing, and Implemented or Interpreted Law:** 63-30-34(4)(b)

◆ ————— ◆

## Commerce, Administration

# R151-1-2

## Electronic Meetings

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 28664  
FILED: 04/21/2006, 14:11

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new section is to establish standards governing the use of electronic meetings.

**SUMMARY OF THE RULE OR CHANGE:** This section provides that the agencies within the Department of Commerce may hold electronic meetings, and it addresses procedures for requesting and establishing an electronic meeting.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 52-4-7.8(3)

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The state budget should not be affected by this section, which codifies existing procedures regarding electronic meetings. In addition, any fiscal impact would have been considered in the passage of S.B. 12 in the 2006 General Session, which bill requires this rule filing. (DAR NOTE: S.B. 12 is found at Chapter 17, Laws of Utah 2006, and was effective 05/01/2006.)

❖ **LOCAL GOVERNMENTS:** The local governments should not be affected by this rule, which deals with electronic meetings held by a state executive branch agency.

❖ **OTHER PERSONS:** Other persons and those regulated by the agencies within the Department of Commerce should not be affected by this rule, which codifies existing procedures regarding electronic meetings. In addition, any fiscal impact would have been considered in the passage of S.B. 12 in the 2006 General Session, which bill requires this rule filing.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Other persons and those regulated by the agencies within the Department of Commerce should not be affected by this rule, which codifies existing procedures regarding electronic meetings. In addition, any fiscal impact would have been considered in the passage of S.B. 12 in the 2006 General Session, which bill requires this rule filing.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated by this rule filing beyond those considered in the passage of S.B. 12. Moreover, it merely codifies existing procedures regarding electronic meetings. Francine A. Giani, Executive Director

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

COMMERCE  
ADMINISTRATION  
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:

Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Francine Giani, Executive Director

**R151. Commerce, Administration.****R151-1. Department of Commerce General Provisions.****R151-1-2. Electronic Meetings.**

In compliance with Utah Code Ann. Section 52-4-207, the following shall apply to electronic meetings held by any "public body" (as defined in Utah Code Ann. Section 52-4-103) within the Department of Commerce.

(1) Electronic meetings are not prohibited but may be limited by an agency director or designee based on budget, public policy, or logistical considerations.

(2)(a) An agency director or designee, on his/her own initiative, may establish an electronic meeting.

(b) Any member of a public body may also request an agency director to establish an electronic meeting.

(i) Any such request shall be made as far in advance as possible, but not less than three business days prior to a meeting to allow for arrangements to be made for the electronic meeting. The agency director or designee may shorten this time frame upon a determination of reasonable need.

(ii) The agency director or designee may determine whether such a request should be granted. No vote of the public body is required.

(3) A quorum of the public body is not required to be present at a single anchor location for an electronic meeting.

(4) Any number of separate connections for members of a public body is allowed for an electronic meeting, unless an agency director or designee limits the number of separate connections based on available equipment capability or other relevant and reasonable considerations.

**KEY: oath, board members, investigators, electronic meetings**

**Date of Enactment or Last Substantive Amendment: ~~February 15, 2005~~ 2006**

**Authorizing, and Implemented or Interpreted Law: Art. IV, Sec. 10; 53-13-101(12); 13-1-6(1); 13-1-2(1)(b); 52-4-103; 52-4-207**

◆ ————— ◆

## Commerce, Occupational and Professional Licensing

# R156-1

## General Rules of the Division of Occupational and Professional Licensing

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28621

FILED: 04/18/2006, 10:20

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to: 1) establish renewal dates for the athletic trainers and medication aide certified license classifications added by the 2006 Legislature in H.B. 74 and H.B. 137, respectively; 2) change the renewal date of construction trades instructor from July 31 of odd years to November 30 of odd years so it is consistent with other Construction Trades Licensing Act license classification

renewal dates that were recently changed; and 3) permit conditional licensure to be issued to applicants for initial licensure. (DAR NOTE: H.B. 74 (2006) is found at Chapter 206, Laws of Utah 2006, and was effective 05/01/2006. H.B. 137 is found at Chapter 291, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: The change in Subsection R156-1-308a(6) establishes the renewal date for athletic trainers as May 31 of odd years; in Subsection R156-1-308a(19), changes the renewal date for construction trades instructors from July 31 of odd years to November 30 of odd years; and in Subsection R156-1-308a(48), establishes the renewal date for medication aides certified as March 31 of odd years. In Section R156-1-308f, additions are made to permit conditional licensure to be issued to an applicant for initial licensure who is selected for audit or is under investigation, pending the completion of the audit or investigation. The rule previously limited conditional licensure to applicants for renewal or reinstatement of licensure. The current procedural requirements and consequences of conditional licensure also apply to initial licensure and remain unchanged.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsections 58-1-106(1)(a) and 58-1-501(4)

#### ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The proposed amendments: establish the renewal date for the new license classifications created by the 2006 Legislature; change the renewal date for construction trades instructors making it consistent with other changes recently made in renewal dates; and extend greater flexibility to the Division in responding to applicants for initial licensure who are selected for audit or are under investigation.

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. The proposed amendments only apply to licensees and potential licensees in regulated professions of the Division.

❖ OTHER PERSONS: Initial license application and renewal fees required for athletic trainers and medication aides certified were included in the fiscal notes in H.B. 74 and H.B. 137, respectively. However, those fees are noted here for information only. The fees are: Athletic Trainer - initial license \$70/renewal \$47; and Medication Aide Certified - initial license \$50/renewal \$42. In H.B. 74, the Division estimated approximately 150-200 applicants would apply for licensure as an athletic trainer and in H.B. 137 the Division estimated approximately 30 applicants would apply for licensure as a medication aide certified. Licensed construction trades instructors will receive a several month extension of licensure at no cost as noted above. Applicants for initial licensure that receive a conditional license sooner than they would receive a regular license may experience some savings in that they can begin to practice their respective profession sooner. Potential employers of the applicant may also benefit. However, exact

savings cannot be determined due to a wide range of circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Initial license application and renewal fees required for athletic trainers and mediation aides certified were included in the fiscal notes in H.B. 74 and H.B. 137, respectively. However, those fees are noted here for information only. The fees are: Athletic Trainer - initial license \$70/renewal \$47; and Medication Aide Certified - initial license \$50/renewal \$42.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing establishes renewal dates for license classifications added during the 2006 General Session and permits conditional licensure for new license applicants while an audit or investigation of the applicant is pending. Other than a possible positive impact to applicants in obtaining conditional licensure prior to the completion of the audit or investigation, no fiscal impact to businesses is anticipated. 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:  
 W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-1. General Rules of the Division of Occupational and Professional Licensing.**  
**R156-1-308a. Renewal Dates.**

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE RENEWAL DATES		
(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Alternate Dispute Resolution Provdr	September 30	even years
(4) Architect	May 31	even years
(5) Athlete Agent	September 30	even years
(6) Athletic Trainer	May 31	odd years

( <del>6</del> )7] Audiologist	May 31	odd years
( <del>7</del> )8] Building Inspector	November 30	odd years
( <del>8</del> )9] Burglar Alarm Security	November 30	even years
( <del>9</del> )10] C.P.A. Firm	September 30	even years
( <del>10</del> )11] Certified Court Reporter	May 31	even years
( <del>11</del> )12] Certified Dietitian	September 30	even years
( <del>12</del> )13] Certified Nurse Midwife	January 31	even years
( <del>13</del> )14] Certified Public Accountant	September 30	even years
( <del>14</del> )15] Certified Registered Nurse Anesthetist	January 31	even years
( <del>15</del> )16] Certified Social Worker	September 30	even years
( <del>16</del> )17] Chiropractic Physician	May 31	even years
( <del>17</del> )18] Clinical Social Worker	September 30	even years
( <del>18</del> )19] Construction Trades Instructor	<del>July 31</del> November 30	odd years
( <del>19</del> )20] Contractor	November 30	odd years
( <del>20</del> )21] Controlled Substance Precursor Distributor	May 31	odd years
( <del>21</del> )22] Controlled Substance Precursor Purchaser	May 31	odd years
( <del>22</del> )23] Controlled Substance Handler	May 31	odd years
( <del>23</del> )24] Cosmetologist/Barber	September 30	odd years
( <del>24</del> )25] Cosmetology/Barber School	September 30	odd years
( <del>25</del> )26] Deception Detection	November 30	even years
( <del>26</del> )27] Dental Hygienist	May 31	even years
( <del>27</del> )28] Dentist	May 31	even years
( <del>28</del> )29] Direct-entry Midwife	September 30	odd years
( <del>29</del> )30] Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
( <del>30</del> )31] Electrologist	September 30	odd years
( <del>31</del> )32] Electrology School	September 30	odd years
( <del>32</del> )33] Environmental Health Scientist	May 31	odd years
( <del>33</del> )34] Esthetician	September 30	odd years
( <del>34</del> )35] Esthetics School	September 30	odd years
( <del>35</del> )36] Factory Built Housing Dealer	September 30	even years
( <del>36</del> )37] Funeral Service Director	May 31	even years
( <del>37</del> )38] Funeral Service Establishment	May 31	even years
( <del>38</del> )39] Genetic Counselor	September 30	even years
( <del>39</del> )40] Health Facility Administrator	May 31	odd years
( <del>40</del> )41] Hearing Instrument Specialist	September 30	even years
( <del>41</del> )42] Landscape Architect	May 31	even years
( <del>42</del> )43] Licensed Practical Nurse	January 31	even years
( <del>43</del> )44] Licensed Substance Abuse Counselor	May 31	odd years
( <del>44</del> )45] Marriage and Family Therapist	September 30	even years
( <del>45</del> )46] Massage Apprentice, Therapist	May 31	odd years
( <del>46</del> )47] Master Esthetician	September 30	odd years
(48) Medication Aide Certified	March 31	odd years
( <del>47</del> )49] Nail Technologist	September 30	odd years
( <del>48</del> )50] Nail Technology School	September 30	odd years
( <del>49</del> )51] Naturopath/Naturopathic Physician	May 31	even years
( <del>50</del> )52] Occupational Therapist	May 31	odd years
( <del>51</del> )53] Occupational Therapy Assistant	May 31	odd years
( <del>52</del> )54] Optometrist	September 30	even years
( <del>53</del> )55] Osteopathic Physician and Surgeon	May 31	even years
( <del>54</del> )56] Pharmacy (Class A-B-C-D-E)	September 30	odd years
( <del>55</del> )57] Pharmacist	September 30	odd years
( <del>56</del> )58] Pharmacy Technician	September 30	odd years
( <del>57</del> )59] Physical Therapist	May 31	odd years
( <del>58</del> )60] Physician Assistant	May 31	even years
( <del>59</del> )61] Physician and Surgeon	January 31	even years
( <del>60</del> )62] Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	November 30	even years
( <del>61</del> )63] Podiatric Physician	September 30	even years

( <del>62</del> 64)	Pre Need Funeral Arrangement Provider	May 31	even years
( <del>63</del> 65)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
( <del>64</del> 66)	Private Probation Provider	May 31	odd years
( <del>65</del> 67)	Professional Counselor	September 30	even years
( <del>66</del> 68)	Professional Engineer	March 31	odd years
( <del>67</del> 69)	Professional Geologist	March 31	odd years
( <del>68</del> 70)	Professional Land Surveyor	March 31	odd years
( <del>69</del> 71)	Professional Structural Engineer	March 31	odd years
( <del>70</del> 72)	Psychologist	September 30	even years
( <del>71</del> 73)	Radiology Practical Technician	May 31	odd years
( <del>72</del> 74)	Radiology Technologist	May 31	odd years
( <del>73</del> 75)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
( <del>74</del> 76)	Registered Nurse	January 31	odd years
( <del>75</del> 77)	Respiratory Care Practitioner	September 30	even years
( <del>76</del> 78)	Security Personnel	November 30	even years
( <del>77</del> 79)	Social Service Worker	September 30	even years
( <del>78</del> 80)	Speech-Language Pathologist	May 31	odd years
( <del>79</del> 81)	Veterinarian	September 30	even years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Professional Employer Organization registrations expire every year on September 30.

(f) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is

being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(g) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

**R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During or Reinstatement During Pendency of Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.**

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

(3)(a) When an initial renewal [applicant] or [a] reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(c) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to an applicant [licensee who] the division determines may be conditionally licensed, renewed, or reinstated shall include the following:

(i) that the [licensee's] applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the [licensee's] applicant's conditional license automatically will or did expire on the expiration date shown on the conditional license, and that the [license] applicant will not be issued, renewed, or reinstated unless or until the applicant timely requests review; and

(v) that if the [licensee] applicant timely requests review, the [licensee's] applicant's conditionally issued, renewed, or reinstated license does not expire until an order is issued unconditionally issuing, renewing, reinstating, denying, or partially denying the initial issuance, renewal, or reinstatement of the [licensee's] applicant's license.

**KEY: diversion programs, licensing, occupational licensing**  
**Date of Enactment or Last Substantive Amendment:**  
~~November 15, 2005~~ **2006**  
**Notice of Continuation: May 2, 2002**  
**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(4)**

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## Commerce, Occupational and Professional Licensing

# R156-40

## Recreational Therapy Practice Act Rules

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE No.: 28674  
 FILED: 04/25/2006, 11:21

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and the Recreational Therapy Board have reviewed the rule and need to update the rule with respect to definitions, educational requirements, experience requirements, examination requirements, and supervision requirements.

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-40-102, amendments are made to update the definition of an "approved graduate degree" and also "supervision" definitions as identified in Subsections R156-40-102(7) and (8) to provide consistency with statutory requirements. New definitions for "full-time, on-site" and "maintain the on-going documentation" have been added to clarify wording that appears in the statute. In Section R156-40-103, a statutory citation has been updated. In Section R156-40-302a, amendments are being proposed to provide consistency with the statute on educational requirements necessary to obtain licensure for all levels of the recreational therapy practitioner. The proposed additions clarify that a master therapeutic recreational specialist (MTRS) and therapeutic recreational specialist (TRS) require certification as a Certified Therapeutic Recreation Specialist (CTRS), documentation of education and completion of a practicum. The proposed additions also clarify the number of hours and content required in an education program for a therapeutic recreational technician (TRT). Section R156-40-302b is being added to clarify statute requirements with respect to experience required for licensure as a MTRS, TRS, and TRT. Section R156-40-302c has been renumbered due to the addition of a new section identified above. The names of the required examinations have also

been updated. Section R156-40-302d is being added to clarify statute requirements with respect to the responsibilities of a MTRS or TRS supervisor when supervising a TRT. Section R156-40-302e has been renumbered due to the addition of new sections identified above and minor grammar changes have been made in the section.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-40-1 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ❖ **LOCAL GOVERNMENTS:** Proposed amendments do not apply to local governments. The proposed amendments only apply to individuals who are licensed or who may apply for licensure in one of the three license classifications of recreational therapy.
- ❖ **OTHER PERSONS:** The proposed amendments only apply to individuals who are licensed or who may apply for licensure in one of the three license classifications of recreational therapy. The Division does not anticipate any costs or savings as the proposed amendments better define qualification requirements for licensure and standards for the profession and make the rules more consistent with statutory requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to individuals who are licensed or who may apply for licensure in one of the three license classifications of recreational therapy. The Division does not anticipate any costs or savings as the proposed amendments better define qualification requirements for licensure and standards for the profession and make the rules more consistent with statutory requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing contains substantive amendments for the purposes of better defining qualification requirements for licensure and standards for the profession, and making the rule consistent with the authorizing statute. No fiscal impact to businesses is anticipated as a result of these amendments. 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](mailto: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 06/20/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/20/2006 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 428 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2006

AUTHORIZED BY: J. Craig Jackson, Director

## **R156. Commerce, Occupational and Professional Licensing.**

### **R156-40. Recreational Therapy Practice Act Rules.**

#### **R156-40-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or these rules:

(1) ~~["Approved equivalent experience" for licensure as a MTRS, as used in Subsection 58-40-5(1)(a)(ii), means two years of full-time paid experience obtained outside Utah while certified by NCTRC as a CTRS.~~

~~—(2)—~~ "Approved ~~[masters]graduate~~ degree in recreation~~[at]~~ therapy or a ~~[masters]graduate~~ degree with an approved emphasis in recreation~~[at]~~ therapy", as used in Subsection 58-40-5(1)(a)(i), means an earned ~~[masters]graduate~~ degree which includes a minimum of nine semester hours or 12 quarter hours of upper division or graduate level course work in recreation~~[at]~~ therapy. ~~[~~

~~—(3)—~~ "An approved training program" for licensure as a TRT, as used in Subsection 58-40-5(3)(a), means 200 hours of education and training under the supervision or direction of a MTRS, which will include instruction in the theories and concepts of recreational therapy from recognized colleges or universities, work shops or seminars, a minimum of ten hours of face to face consultation, and a structured practical experience in a facility. ~~]~~

(4) "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the National Council for Therapeutic Recreation Certification.

(3) "Full-time, on-site", as used in Subsections 58-40-5(3)(c), 58-40-6(3)(a)(i) and (3)(b)(i), means an individual who is employed on the premises with the hiring agency for a minimum of 30 hours per week.

(4) "Maintain the on-going documentation", as used in Subsection 58-40-6(3)(b), means:

- (a) collecting data for the assessment process;
- (b) documenting the on-going treatment or intervention provided to clients according to the treatment plan; and
- (c) providing periodic review of client status according to agency regulations.

(5) "MTRS" means a person licensed as a master therapeutic recreational specialist.

(6) "NCTRC" means the National Council for Therapeutic Recreation Certification.

(7) "Supervision", as used in Subsections 58-40-5(3)(c), 58-40-6(1)(a), (2)(b), (3)(a)(i) and (3)(b)(i), means full-time, on-site oversight by a MTRS or TRS of the recreation therapy services offered.

(7) "Supervision of a ~~[therapeutic recreational technician]", as used in Subsection 58-40-6(3)(a) and (b), or "supervision of a~~

~~]~~temporary TRS", as used in Subsection R156-40-302~~[e]e(d)~~, means that the MTRS or TRS supervisor is responsible for the recreational therapy activities performed by the ~~[TRT]temporary TRS~~ and will review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the MTRS or TRS in the treatment plan.

(8) "TRS" means a person licensed as a therapeutic recreational specialist.

(9) "TRT" means a person licensed as a therapeutic recreational technician.

(10) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

#### **R156-40-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 40.

#### **R156-40-302a. ~~[Education and Practicum Requirements for Licensure as a Therapeutic Recreational Specialist] Qualifications of Licensure - Education Requirements.~~**

In accordance with Section 58-40-5, the educational requirements for licensure include:

(1) A MTRS applicant shall:

- (a) have a current NCTRC certification as a CTRS; and
- (b) document that he has completed the education and practicum requirements for licensure as a TRS.

(2) A TRS applicant shall:

- (a) have a ~~[In accordance with Subsections 58-40-5(2)(a) and (b), a] current NCTRC certification as a CTRS; and~~
- (b) ~~[is required to-]document that he[a person] has completed the education and practicum requirements for licensure as a TRS.~~

(3) A TRT applicant shall:

- (a) have an approved educational course in therapeutic recreation taught by a MTRS, as required by Subsection 58-40-5(3)(b)(i), which shall consist of 90 hours of structured education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:

- (i) theories and concepts of recreation therapy;
- (ii) the therapeutic recreation process;
- (iii) characteristics of illness and disability and their effects on leisure;
- (iv) medical and psychiatric terminology including psychiatric, pharmacology and abbreviations;
- (v) ethics;
- (vi) role and function of other health and human service professionals including agencies, medical specialists and allied health professionals; and
- (vii) health and safety.

#### **R156-40-302b. Qualifications for Licensure - Experience Requirements.**

In accordance with Section 58-40-5, the experience requirements for licensure include:

- (1) A MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-5(1)(a)(ii), which means an individual must work as a TRS in Utah in a paid position practicing recreation therapy and/or work outside of Utah as a CTRS in a paid position practicing recreation therapy as defined in Subsection 58-40-2(4)(a) and (b) for 4000 hours.

(2) A TRS is required to complete an approved practicum, as required by Subsection 580-40-5(2)(b), which means a practicum verified on the graduate degree transcript.

(3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-5(3)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed MTRS or TRS supervisor that includes:

(a) a minimum of ten hours of face to face supervision by the MTRS or TRS supervisor;

(b) training in the therapeutic recreation process as defined in Subsections 58-40-2(4)(a) and (b);

(c) interdisciplinary contact;

(d) administration contact; and

(e) community relations.

**R156-40-302[b]c. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-40-5(1)(e), 58-40-5(2)(f) and 58-40-5(3)(e), applicants for licensure shall pass the following examinations:

(1) Applicants for licensure as a MTRS, TRS or TRT shall pass the Utah Recreation[~~at~~] Therapy Law and Rule Examination with a minimum passing score of 75%.

(2) Applicants for licensure as a MTRS or TRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as a CTRS.

(3) Applicants for licensure as a TRT shall pass the Utah Recreation[~~at~~] Therapy Theory Examination for TRT with a minimum passing score of 70%.

**R156-40-302d. Qualifications for Supervision.**

Supervision of a therapeutic recreation technician, as used in Subsection 58-40-6(3)(a)(i) and (3)(b)(i), means that the MTRS or TRS supervisor is responsible for:

(1) providing on-site training, observation, direction and evaluation, as defined in Subsection 58-40-2(4)(b), to include:

(a) reviewing the recreation therapy intervention as defined by the treatment plan performed by the TRT;

(b) demonstrating periodic review and evaluation of ongoing documentation;

(c) reviewing the recreation therapy program according to administrative and governing regulations; and

(d) reviewing and evaluating adherence to the standards of the profession.

**R156-40-302[e]g. Qualifications for Temporary License as a TRS - Supervision Required.**

(1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:

(a) submit an application for temporary license in the form prescribed by the division which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;

(b) pay[s] a fee determined by the department under Section 63-38-3.2;

(c) meet[s] all the requirements for licensure, except passing the NCTRC examination; and

(d) practice[s] recreation[~~at~~] therapy under the supervision of a Utah licensed TRS or MTRS as defined in Subsection R156-40-102([7]8).

(2) The temporary license will not be issued for a period greater than ten months.

(3) The temporary license will not be renewed or extended for any purpose.

**KEY: licensing, recreational therapy[~~at~~]**

**Date of Enactment or Last Substantive Amendment: [~~July 16, 1998~~]2006**

**Notice of Continuation: November 6, 2001**

**Authorizing, and Implemented or Interpreted Law: 58-40-1; 58-1-106(1)(a); 58-1-202(1)(a)**



Commerce, Occupational and  
Professional Licensing

**R156-60b**

Marriage and Family Therapist  
Licensing Act Rules

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28672

FILED: 04/25/2006, 10:12

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Marriage and Family Therapy Board have reviewed the rule and need to update the rule with respect to definitions, qualifications for supervision, continuing education, and applicable code of ethics.

SUMMARY OF THE RULE OR CHANGE: In Section R156-60b-102, amendments are made to the definition of "face to face supervision" and added definitions for "group supervision" and "individual supervision". In Section R156-60b-103, a statutory citation to Section 58-1-106 was updated. In Section R156-60b-302b, the proposed amendments provide consistency with the statute on the required number of hours of face to face supervision and clarify misunderstanding of statutory requirements. Proposed amendments also delete the term "conjoint" in Subsection R156-60b-302b(1)(e) which has confused applicants and uses more recognized terms of couple and family therapy. In Section R156-60b-302d, the proposed amendments are added to create consistency with national and state association requirements to be qualified as a supervisor. In Section R156-60b-304, the amendment is made to eliminate the requirement for a certified marriage and family therapist intern to complete continuing education hours.

The intern is under supervision and in a learning capacity and does not require continuing education to maintain competency. In Section R156-60b-502, amendments are made to update the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics from the July 1, 1998, edition to the July 1, 2001, edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a) and 58-1-202(1)(a) and Section 58-60-301

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the July 1, 1998, edition of the AAMFT Code of Ethics, and adds the July 1, 2001, edition of the AAMFT Code of Ethics

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. The proposed amendments only apply to individuals who are licensed or who may apply for licensure as a marriage and family therapist or as a certified marriage and family therapist intern.

❖ OTHER PERSONS: The proposed amendments only apply to individuals who are licensed or who may apply for licensure as a marriage and family therapist or certified marriage and family therapist intern. With respect to the updated Code of Ethics, no costs or savings are anticipated as a result of this amendment since the current edition of the Code of Ethics can be obtained via the American Association for Marriage and Family Therapy website. With respect to the amendment which deletes certified marriage and family therapist interns from completing 40 continuing education hours every 2 years, the Division anticipates each certified marriage and family therapist intern will see some savings as a result of not having to complete 40 continuing education hours every 2 years. The Division is unable to determine an exact amount of savings due to the varying costs involved with obtaining continuing education hours. The Division currently has 76 individuals who are licensed as a certified marriage and family therapist intern. The Division anticipates no further costs or savings as a result of the additional amendments being proposed to the rule beyond those identified above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated as a result of the proposed amendments; only savings are anticipated by the Division as identified above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing contains substantive amendments for the purposes of better defining standards for the profession and making the rule consistent with the authorizing statute and national standards. Other than the possible savings to regulated certified marriage and family therapist interns, resulting from the elimination of the continuing education requirement, no fiscal impact to businesses is anticipated. 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](mailto: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 06/14/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/02/2006 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 428 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing. R156-60b. Marriage and Family Therapist Licensing Act Rules. R156-60b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Face to face supervision" ~~means one to one supervision between the supervisor and the supervisee or group supervision between the supervisor and up to two supervisees. During group supervision, one and a half hours is equivalent to one clock hour of supervision.~~ as described in Subsection R156-60b-302a(1)(b)(vii) includes both individual and group supervision.

(3) "Group supervision" means supervision between the supervisor and no more than three supervisees, unless preapproved by the Board.

(4) "Individual supervision" means supervision between the supervisor and one or two supervisees in accordance with standards set forth in Subsection R156-60b-302b(1)(d).

~~(3)5~~ "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60b-502.

**R156-60b-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 60, Part 3.

**R156-60b-302b. Qualifications for Licensure - Experience Requirements.**

(1) Pursuant to Subsections 58-60-305(1)(e) and (f), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under the supervision of a marriage and family therapist supervisor meeting the requirements under Section 58-60-307;

(d) include at least ~~200~~100 hours of clinical face to face supervision spread uniformly throughout the training period~~[of which at least 100 hours must be individual supervision]~~;

(e) in accordance with Subsection 58-60-305(1)(f), include a minimum of 1000 hours of mental health therapy of which at least 500 hours are in [enjoint-]couple or family therapy with two or more clients present~~[sessions]~~; and

(f) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(1)(e) and (f), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

**R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor and Mental Health Therapist Training Supervisor.**

Pursuant to the provisions of Subsection 58-60-307(1), to be qualified as a marriage and family therapist supervisor for training required under Subsections 58-60-305(1)(e) and (f), an individual shall:

(1) be currently approved by AAMFT as a marriage and family therapist supervisor; or

(2) be currently licensed ~~[or certified]~~ in good standing as a marriage and family therapist in the state in which the supervised training is being performed; and meet the following requirements:

(a) have lawfully engaged in the practice of mental health therapy for not less than two years; and

~~(b)(i) have successfully completed [30 clock hours of instruction approved by the division in collaboration with the board in the theory, practice, and process of supervision; and] a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited marriage and family therapy (MFT) program at an accredited university; or~~

(ii) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association of Marriage and Family Therapists (UAMFT) as follows:

(A) four hours of review of models of MFT and supervision;

(B) eight hours of MFT supervision processes and practice;

(C) four hours of research on effective outcomes and processes of supervision; and

(D) four hours of AAMFT Code of Ethics, state rules and case studies related to MFT supervision; or

(3) be currently licensed as a clinical social worker, psychologist, or professional counselor in Utah and meet the following requirements:

(a) have lawfully engaged in the practice of mental health therapy for not less than two years;

(b) produce certified transcripts from a program accredited by a professional accrediting body approved by the Council for Higher

Education Accreditation of the American Council on Education, which includes courses in the following areas:

(i) six semester hours/nine quarter hours in theoretical foundations of marriage and family therapy;

(ii) nine semester hours/12 quarter hours in assessment and treatment in marriage and family therapy; and

(iii) six semester hours/nine quarter hours in human development and family studies which includes ethnic minority and gender issues, including sexuality, sexual functioning and sexual identity; and

(c)(i) have successfully completed a supervision course in a COAMFTE accredited MFT program at an accredited university; or

(ii) have successfully completed 20 clock hours of instruction sponsored by AAMFT or UAMFT in the following areas:

(A) four hours in review of models of marriage and family therapy and supervision;

(B) eight hours in MFT supervision processes and practice;

(C) four hours in research on effective outcomes and processes of supervision; and

(D) four hours in AAMFT Code of Ethics, state rules and case studies related to MFT supervision.]

~~(c) have successfully completed 36 clock hours of training related to the practice of supervision under the direction of a qualified marriage and family therapist training supervisor.]~~

**R156-60b-304. Continuing Education.**

(1) ~~[There]~~In accordance with Section 58-60-105, there is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist~~[and as a certified marriage and family therapist intern]~~.

(2) During each two year period commencing September 30th of each even numbered year, a marriage and family therapist ~~[and as a certified marriage and family therapist intern]~~ shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice with at least 15 hours thereof being directly related to marriage and family therapy.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 14 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist;

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years; however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

#### **R156-60b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by provisions 1 to 8.[7]8 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, [1998]2001, which is adopted and incorporated by reference.

**KEY: licensing, therapists, marriage and family therapist[≠]  
Date of Enactment or Last Substantive Amendment: [June 1, 2001]2006**

**Notice of Continuation: October 21, 2004**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-301**



## Commerce, Real Estate **R162-10** Administrative Procedures

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28668

FILED: 04/21/2006, 16:55

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Division of Real Estate and the Utah Real Estate Commission have decided to conduct disciplinary proceedings as informal adjudicative proceedings instead of formal adjudicative proceedings.

**SUMMARY OF THE RULE OR CHANGE:** Disciplinary proceedings are changed from formal adjudicative proceedings (which have been conducted by an administrative law judge) to informal adjudicative proceedings before the Utah Real Estate

Commission. Procedural rules for various types of informal proceedings are also provided.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2-5.5 and Subsection 63-46b-1(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The only State agency that would be impacted would be the Division of Real Estate. The Division of Real Estate anticipates that there will be no significant cost or savings in its budget by conducting more informal adjudicative proceedings that are subject to de novo review instead of formal adjudicative proceedings that are subject to a review on the record.

❖ LOCAL GOVERNMENTS: None--The rules on administrative proceedings before the Utah Real Estate Commission do not impact local government.

❖ OTHER PERSONS: It is anticipated that persons who are the subject of proceedings before the Utah Real Estate Commission will save money because the proceedings will be informal proceedings as opposed to formal proceedings. It is unknown whether the appeal from an informal proceeding, which is a trial de novo in district court, will cost these persons money or save them money as compared to the cost of an appeal from a formal proceeding, which is a review on the record of what occurred at the agency level. Therefore, the costs or savings to those persons cannot be determined or quantified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As set forth above under "Other persons," it is unknown whether the change from formal proceedings to informal proceedings for disciplinary actions will cost the persons involved in these proceedings any money, or whether the change will save them money.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing changes the designation of disciplinary actions from formal adjudicative proceedings to informal adjudicative proceedings. It also codifies existing procedures for adjudicative proceedings conducted by the agency. It is not clear whether in the long run there will be a cost savings or cost increase to the industry as a result of the change in the designation of adjudicative proceedings. However, no fiscal impact to other businesses is anticipated by such change or by the codification of existing procedures. Francine A. 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:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Derek Miller, Director

## **R162. Commerce, Real Estate.**

### **R162-10. Administrative Procedures.**

#### **R162-10-1. Formal Adjudicative Proceedings.**

10.1. Any adjudicative proceeding as to the following matters shall be conducted as a formal adjudicative proceeding: [

~~10.1.1. A disciplinary action commenced by the Division following investigation of a complaint.]~~

10.1.[2]1. The revocation or suspension of any registration issued pursuant to the Time Share and Camp Resort Act, or the imposition of a fine against the registrant.

10.1.[3]2. The revocation or suspension of any registration issued pursuant to the Utah Uniform Land Sales Practices Act, or the imposition of a fine against the registrant.

10.1.[4]3. Any proceedings conducted subsequent to the issuance of cease and desist orders.

#### **R162-10-2. Informal Adjudicative Proceedings.**

10.2. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

10.2.1. The issuance of a real estate license, the renewal of an active, inactive or expired license, or the activation of an inactive license.

10.2.2. Any action on a sales agent's license based upon the revocation or suspension of a principal broker's license or the failure of the principal broker to renew his license.

10.2.3. The issuance of renewal or certification of real estate schools or instructors.

10.2.4. The revocation of a real estate license due to payment made from the Real Estate Recovery Fund.

10.2.5. The issuance[.] or renewal[.] ~~suspension or revocation~~ of registration pursuant to the Land Sales Practices Act.

10.2.6. The exemption from, or the amendment of, registration pursuant to the Land Sales Practices Act.

10.2.7. The issuance or renewal of any registration pursuant to the Time Share and Camp Resort Act.

10.2.8. Any waiver of, or exemption from, registration requirements pursuant to the Time Share and Camp Resort Act.

10.2.9. The issuance of any declaratory order determining the applicability of a statute, rule or order when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division of Real Estate.

10.2.10. The post-revocation hearing following the revocation of license pursuant to Utah Code Section 61-2-9(1)(e)(i) for failure to accurately disclose a criminal history.

10.2.11. A hearing on whether or not a licensee or certificate holder whose license or certificate was issued or renewed on probationary status has violated the condition of that probation.

10.2.12. Except as provided in Section 63-46b-20, a disciplinary action commenced by the Division following investigation of a complaint.

**R162-10-3. Proceedings Not Designated.**

10.3. All adjudicative proceedings as to any other matters not specifically listed herein shall be conducted on an informal basis.

**R162-10-4. Hearings Required in Informal Adjudicative Proceedings.**

10.4.1 A post-revocation hearing will be held if a licensee whose license has been automatically revoked pursuant to U.C.A. Section 61-2-9(1)(e)(i) files a timely request for a hearing to challenge the revocation.

10.4.2 Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2-12 following investigation of a complaint by the Division.

**R162-10-5. Procedures for Hearings in All Informal Adjudicative Proceedings.**

10.5.1 The procedures to be followed in all informal adjudicative proceedings shall be as set forth in Title 63, Chapter 46b, Utah Administrative Procedures Act, the Department of Commerce Administrative Procedures Act Rules, Utah Administrative Code Section R151-46b, and in this Section R162-10-5.

10.5.2 Assistance of Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge or any request for assistance from an Administrative Law Judge shall be in writing.

10.5.3 Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft documents, attorney/client communications, materials containing an attorney's work product, materials containing the investigators' thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information it has already provided to that party.

10.5.4 Intervention. Intervention is prohibited.

10.5.5 Notice of hearing. Upon the scheduling of a hearing by the Division, the Division shall mail written notice of the date, time, and place scheduled for the hearing. If the respondent in a proceeding commenced by the Division is an actively licensed sales agent or associate broker, the Division shall mail a copy of the notice of hearing to the principal broker with whom the respondent is licensed.

10.5.6 Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63, Chapter 46b, the Utah Administrative Procedures Act or Title 52, Chapter 4, the Open and Public Meetings Act.

10.5.7 Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting

them. The party who has requested that a witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, and the witness fee and mileage to be paid to the witness.

10.5.8 Representation by counsel. The respondent in a proceeding commenced by the Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

10.5.9 Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to the proceeding, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the proceedings.

10.5.10 Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting a review. The Order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly mailed or delivered to each of the parties.

**R162-10-6. Additional Procedures for Disciplinary Proceedings Commenced by the Division.**

10.6 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2-12 following the investigation by the Division of a complaint:

10.6.1 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division.

10.6.2 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2-12 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition.

10.6.3 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition.

10.6.3.1 Contents of Witness List. A Witness List shall contain the name, address, and telephone number of each witness the party intends to call to testify at the hearing, and a summary of the testimony expected from the witness.

10.6.3.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits.

10.6.4 Pre-hearing Motions. Any pre-hearing motion permitted by Utah Administrative Code Section R151-46b, the Department of Commerce Administrative Procedures Act Rules, shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions.

**KEY:** real estate business

**Date of Enactment or Last Substantive Amendment:** ~~April 19, 2006~~

**Notice of Continuation:** October 7, 2005

**Authorizing, and Implemented or Interpreted Law:** 61-2-5.5; 63-46b-1(5)

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## Commerce, Real Estate R162-102-3 Renewal

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 28665  
FILED: 04/21/2006, 16:42

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose for this rule change is to provide a process by which an appraiser who is called to active military service can avoid loss of license or certification due to inability to complete the required continuing education while on active duty.

**SUMMARY OF THE RULE OR CHANGE:** An appraiser who is unable to renew a license or certification because active military service has prevented the completion of the continuing education required for renewal may have a timely application for renewal held in suspense pending the return from military service and the completion of the continuing education.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 61-2b-6(1)(l)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no savings anticipated in the State budget because of this rule change. The only State agency that it is anticipated would be affected by the rule change is the licensing agency for appraisers, which is the Division of Real Estate. There may be a slight increased cost to the Division of Real Estate because it will be required to hold a few applications in a suspended status, but the cost of that would be minuscule.

❖ **LOCAL GOVERNMENTS:** No cost is anticipated for local government since local governments do not license or regulate appraisers. However, local governments do employ appraisers, and could conceivably save money if a staff appraiser is called to active duty and does not lose his or her license or certification while on active duty. This rule change could save the appraiser (or his or her employing agency) the cost of the appraiser starting over to obtain a new license or certification after return from military service.

❖ **OTHER PERSONS:** The only other persons affected by this rule change are appraisers who are called to active military service and might lose their licenses or certifications while on active duty because of inability to complete the continuing education required for renewal. Those persons could be saved hundreds or thousands of dollars by not having to start

over to obtain a new license or certification on their return from active duty.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There would be no compliance costs for the appraisers affected by this rule change; it would potentially save money for appraisers who are called to active duty.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated as a result of this rule filing, and licensees who are called to active duty may experience a cost-savings due to these renewal amendments. Francine A. 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:**

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at [swismer@utah.gov](mailto:swismer@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Derek Miller, Director

#### **R162. Commerce, Real Estate.**

#### **R162-102. Application Procedures.**

#### **R162-102-3. Renewal.**

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the registered, licensed or certified appraiser at the mailing address shown on the Division records. The applicant for renewal must return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 The licensed or certified appraiser must return proof of completion of 28 hours of continuing education taken during the preceding two years.

102.3.1.1.1 Even though the appraiser may have changed licensing categories, every third time the appraiser with a renewal date before January 1, 2004 renews, the appraiser will provide evidence of having completed, within the two years prior to the third renewal, a course in the Uniform Standards of Professional Appraisal Practice. This USPAP course may be either a 7-hour National USPAP course or any 15-hour USPAP course that includes passing of a final exam. The hours of credit from USPAP courses may be used to meet part of the continuing education requirement for that renewal period. The appraiser must obtain and study the Utah Real Estate Appraiser

Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them.

Appraisers with a renewal date after January 1, 2004 will be required to comply with Section 102.3.1.1.4.

102.3.1.1.2 Those State-Licensed Appraisers who were Senior Appraisers prior to May 3, 1999 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course as long as their renewal date is before January 1, 2004. Those State-Licensed Appraisers who have a renewal date that is after January 1, 2004 will be required to comply with Section 102.3.1.1.4.

102.3.1.1.3 Those appraisers who were State-Registered Appraisers prior to May 3, 2001 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course as long as their renewal date is before January 1, 2004. Those formerly State-Registered Appraisers who have a renewal date that is after January 1, 2004 will be required to comply with Section 102.3.1.1.4.

102.3.1.1.4 Effective January 1, 2004, all appraisers must take the 7-hour National USPAP Update Course or its equivalent at least once every two years in order to maintain a license or certification. In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license or certification shall expire.

102.3.2.1 A license or certification may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 After this 30-day period and until six months after the expiration date, the license or certification may be reinstated upon payment of a reinstatement fee in addition to the requirements of Section 102.3.1. It shall be grounds for disciplinary sanction if, after the expiration date, the individual continues to perform work for which a license or certification is required.

102.3.2.3 A person who does not renew a license or certification within six months after the expiration date shall be relicensed or recertified as prescribed for an original application. The applicant will receive credit for previously credited prelicensing education. Applicants for a new license or certification will be required to complete a USPAP course and retake the examination for the classification for which they are applying.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser shall be extended a 15-day grace period to complete the application.

102.3.4 Renewal while on active military service. An appraiser who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's required continuing education may submit a timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

102.3.4.1 The appraiser will have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the Division.

102.3.4.2 An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

**KEY: real estate appraisals, licensing**

**Date of Enactment or Last Substantive Amendment: ~~May 25, 2005~~ 2006**

**Notice of Continuation: March 27, 2002**

**Authorizing, and Implemented or Interpreted Law: 61-2b-6(1)(I)**

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## Commerce, Real Estate R162-105-1 Scope of Authority

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28666

FILED: 04/21/2006, 16:45

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division investigators have realized that there is a loophole in the existing rule that would allow a person whose application for renewal has been denied for professional misconduct to go to work as a trainee for another appraiser. The Division also believes that a supervising appraiser should have a duty to refrain from employing as trainees parties whose appraiser licenses or certifications have been suspended for disciplinary reasons.

**SUMMARY OF THE RULE OR CHANGE:** A person whose application for renewal of a license or certification was denied would be ineligible to go to work for another appraiser as a trainee for five years after the denial of the person's application for renewal. The rule change would also prohibit an appraiser from employing as a trainee a person whose appraiser license has been suspended while that person's license is in suspended status.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 61-2b-6(1)(I)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The rules on who may act as an appraisal trainee do not impact any State agency except the licensing agency for appraisers, which is the Division of Real Estate. These rule changes will not cost the Division of Real

Estate any money. Prohibiting persons who have had licenses or certifications denied or suspended for disciplinary reasons from working as appraisal trainees may save the Division investigative costs in that these persons will not be able to commit additional bad acts in appraisals that would result in additional complaints that would have to be investigated by the Division. However, these potential savings cannot be estimated since it is unknown how many persons would be eliminated from acting as trainees because of this rule change.

❖ LOCAL GOVERNMENTS: None--A rule precluding a person whose application for renewal of an appraiser license or certification has been denied from acting as an appraisal trainee has no effect on local government and therefore will result in neither costs nor savings for local government.

❖ OTHER PERSONS: The only persons affected by this rule change are appraisers and their trainees. This rule change will not result in savings to those parties. It may result in a very minimal cost increase for supervising appraisers since it would be prudent for them to check on whether an applicant for a trainee position is an appraiser whose renewal has been denied or whose license or certification has been suspended by the Division. However, this may be done at no charge by checking the licensee database on the Division's web site.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As stated above, it would be prudent for a supervising appraiser to protect him or herself by checking on whether an applicant for a trainee position is an appraiser whose renewal has been denied or whose license or certification has been suspended by the Division. However, the increased cost of evaluating candidates should be minimal since this check may be done at no charge on the Division's web site.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies existing standards. No fiscal impact to businesses is anticipated beyond those addressed in the rule summary. Francine A. Gian, 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:  
Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at [swismer@utah.gov](mailto:swismer@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Derek Miller, Director

**R162. Commerce, Real Estate.**

**R162-105. Scope of Authority.**

**R162-105-1. Scope of Authority.**

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$1,000,000 and complex one to four residential units having a transaction value of less than \$250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Trainees.

105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a State-Licensed or State-Certified Appraiser to earn points for licensure.

105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection 105.3.3 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection 105.3.3 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.

105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall

delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.

105.3.3 In order to become a trainee, the person must have successfully completed 75 classroom hours of State-approved education in subjects related to real estate appraisal, including the Uniform Standards of Professional Appraisal Practice (USPAP), must have passed the final examination in the USPAP course, and must file a notification with the Division as provided in Subsection 105.3.3.1. The education required by this Subsection must have been completed within the 5 years preceding the filing of the notification required by Subsection 105.3.3.1.

105.3.3.1 Trainee Notification. Prior to performing any of the appraisal-related activities for which points will be claimed toward licensure, a trainee must file with the Division a notification in the form required by the Division. In addition to any identifying information about the trainee required by the Division, the notification shall contain the name and business address of the appraiser(s) who will supervise the trainee in the performance of the appraisal-related duties, and shall be signed by the supervisor. The notification shall also contain the course names, course provider names, and course completion dates for the 75 hours of education required by Subsection 105.3.3. The original course completion certificates shall be submitted to the Division with the notification.

105.3.3.2 Except as provided in Subsection 105.3.3.3, no experience points will be granted toward licensure for trainee experience that is claimed to have been earned prior to the date the notification was filed with the Division.

105.3.3.3 Until five years after the effective date of this rule, points that were earned prior to the effective date of this rule may be claimed and will be awarded to applicants who are able to document those points on the forms required by the Division, notwithstanding the fact that the points were earned prior to the date a trainee notification was filed with the Division.

105.3.4 Supervising Appraisers. A trainee may have more than one supervising appraiser. Effective January 1, 2008, a supervising appraiser may supervise a maximum of three trainees at one time.

105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Licensed Appraiser, State-Certified Residential Appraiser, or State-Certified General Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.7 Points for Licensure. A trainee may accumulate experience points for each duty listed below at the rate of 33.3% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1 or 104-18.2, not to exceed the maximum number of points awarded for each property. Trainee experience must be earned in at least three of the following

categories. No more than one-third of the experience points submitted toward licensure may come from any one of the following categories:

(a) participation in selecting comparables for an appraisal assignment - 33.3% of total points

(b) participation in making adjustments to comparables - 33.3% of total points

(c) drafting appraisal reports - 33.3% of total points

(d) as provided in Sections 105.3.5 and 105.3.6, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measuring the property - 33.3% of total points as long as both an interior and exterior inspection of the property is performed. No points will be granted for inspections that do not include both an interior and an exterior inspection.

105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application. Applicants who believe the Experience Points Schedules do not adequately reflect their experience may refer to Section 104-17.

105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.10 A state-licensed or state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.

105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser must actively supervise those inspections and the resulting appraisals.

105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall contain, at a minimum, the following information for each appraisal.

(a) Type of property;

(b) Address of appraised property;

(c) Description of work performed;

(d) Number of work hours;

(e) Signature and state license/certification number of the supervising appraiser; and

(f) Client name and address.

105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.

105.4. Trainee Status after Revocation, Surrender, Denial, or Suspension of License or Certification.

105.4.1 Trainee Status after Revocation, ~~or~~ Surrender, or Denial of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraisal certification or license has been revoked by the Board, whose application for renewal of a certification or license has been denied by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of five years after the date of the revocation, denial, or surrender, nor may a licensed or certified appraiser employ or supervise the former appraiser ~~[him during that period]~~ in the performance of the activities permitted trainees for that same period of time.

105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension. While an appraiser is suspended, [nor may] a licensed or certified appraiser may not employ or supervise the suspended appraiser [him during that period] in the performance of the activities permitted trainees.

**KEY: real estate appraisals**

**Date of Enactment or Last Substantive Amendment:**  
~~[September 29, 2005]~~ 2006

**Notice of Continuation:** January 13, 2004

**Authorizing, and Implemented or Interpreted Law:** 61-2b-6(1)(l)

◆ ————— ◆

## Health, Health Care Financing, Coverage and Reimbursement Policy

### R414-303-7

#### Foster Care

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28698

FILED: 05/01/2006, 10:53

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rulemaking is needed to add a Medicaid coverage group of independent foster care adolescents who are age 18 but not yet 21. This is to comply with H.B. 288 passed by the Utah State Legislature in its 2006 General Session. (DAR NOTE: H.B. 288 (2006) is found at Chapter 110, Laws of Utah 2006, and was effective 05/01/2006.)

**SUMMARY OF THE RULE OR CHANGE:** In Section R414-303-7, this change adds a new coverage group of independent foster care adolescents and defines the criteria for Medicaid eligibility for the group.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-403

**THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:** 1902(a)(10)(A)(ii)(XVII) of the Social Security Act

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The state anticipates the annual cost to be about \$1,514,500 of which \$450,000 are state funds and \$1,064,500 are federal funds.

❖ **LOCAL GOVERNMENTS:** There is no impact on local governments, because local governments do not determine eligibility for Medicaid.

❖ **OTHER PERSONS:** There are no anticipated costs to others. Individuals who qualify for services under this new coverage

group could save up to \$1,514,500 in medical expenses they would otherwise have to pay for themselves. Medicaid providers will receive up to \$1,514,500 for services they perform for Medicaid patients extended coverage by this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this rulemaking does not require individuals who meet the criteria for coverage to pay anything to receive this coverage. This rulemaking does not impose any costs on individuals, businesses, or other government agencies.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule implements H.B. 288 which extends Medicaid coverage to young adults who were in foster care upon becoming adults. It provides additional funding to pay health care providers. A. Richard Melton, Acting 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:**

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at [rmartin@utah.gov](mailto:rmartin@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 06/14/2006.**

**THIS RULE MAY BECOME EFFECTIVE ON:** 06/22/2006

**AUTHORIZED BY:** Richard Melton, Deputy Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-303. Coverage Groups.**

**R414-303-7. Foster Care and Independent Foster Care Adolescents.**

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

**KEY: income, coverage groups, independent foster care adolescent**

**Date of Enactment of Last Substantive Amendment: [~~October 16, 2004~~2006]**

**Notice of Continuation: January 31, 2003**

**Authorizing and Implemented or interpreted law: 26-18-3; 26-1-5**



## Health, Health Care Financing, Coverage and Reimbursement Policy

# R414-304-11

### Income Standards

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28680

FILED: 04/27/2006, 14:23

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rulemaking amends the way the Department calculates the premium for the Medicaid Work Incentive program. It changes the Medicaid Work Incentive premium calculation so that clients with income under 120% of the federal poverty guideline will pay a smaller percentage of income for their premium.

**SUMMARY OF THE RULE OR CHANGE:** A new Subsection R414-304-11(1) is added and other subsections are renumbered. Subsection R414-304-11(3) is modified to remove the language that says a person who qualifies for the Medicaid Work Incentive (MWI) program can choose coverage under either the Medicaid Work Incentive program or under a medically needy coverage group depending on whether the spenddown under medically needy is lower than the MWI premium. This must be changed because if a person is eligible under the MWI program, then the person does not have the option of coverage under a medically needy coverage group. Subsection R414-304-11(4) is modified to explain that the premium for the Medicaid Work Incentive program will use three different percentages to calculate the premium depending on how much income a client has. For

clients with income over 100% but not over 110% of the federal poverty guideline, the MWI premium will be 5% of the client's income. For clients with income over 110% but not over 120% of the federal poverty guideline, the MWI premium will be 10% of the client's income. For clients with income over 120% of the federal poverty guideline, the MWI premium will be 15% of the client's income. This makes the transition from the spenddown Medicaid program easier because currently a client whose income is between 100% and 120% of the federal poverty guideline would pay a lower spenddown than what the current MWI premium would be at these income levels. Adding these two steps for the lower income levels may increase a client's cost for Medicaid, but it increases it in smaller steps until their income reaches 120% of poverty. At that point, the MWI premium is always lower than a spenddown would be.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2003

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This change will result in some MWI individuals paying a lower premium, while others will pay a higher premium. The combined cost to the department is about \$1608 annually because of reduced net collections from these recipients. The federal match would be about \$1,142.
- ❖ **LOCAL GOVERNMENTS:** This does not impact local governments because Medicaid eligibility is not a local government function.
- ❖ **OTHER PERSONS:** The 34 current recipients will be affected by this change. About 19 will pay less than they are now, while 15 will pay more. The aggregate savings for this group of clients is about \$134 per month or about \$1,608 annually.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The increased cost for individual clients who will have to pay more to receive Medicaid ranges between \$3 to \$37 per month; or \$36 to \$444 annually. The savings for individual clients who will pay less to receive Medicaid ranges between \$2 to \$37 per month or \$24 to \$444 annually.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change is necessary to coordinate benefits between the Medicaid Work Incentive program and the medically needy coverage group. A. Richard Melton, Acting 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:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2006

AUTHORIZED BY: Richard Melton, Deputy Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-304. Income and Budgeting.**

**R414-304-11. Income Standards.**

(1) This rule sets forth the income standards the Department uses to determine eligibility for Medicaid coverage groups.

~~(1)2~~ The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, ~~2004~~2003, which are incorporated by reference.

~~(2)3~~ The Department calculates the Aged and Disabled poverty-related Medicaid income standard ~~shall be calculated~~ as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) ~~shall~~ apply unless the disabled individual or a disabled aged individual has earned income. In this case, the income standards of ~~either the Medically Needy (BMS) program or the Medicaid Work Incentive program~~ ~~may be applied~~ apply. ~~The individual may choose coverage under either program if the individual meets all other eligibility criteria for both programs.~~

~~(3)4~~ The income standard for the Medicaid Work Incentive Program ~~shall be~~ (MWI) for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) ~~shall~~ apply.

(a) The Department ~~shall~~ charges a MWI buy-in premium for the Medicaid Work Incentive Program when the countable income of the eligible individual, or the eligible individual and spouse, when the spouse is also eligible or has deemable income, exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the Department ~~shall~~ charges a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium ~~will be calculated as~~ is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. ~~percent of~~ The premium is calculated using only the eligible individual's~~s~~ or eligible couple's~~s~~ countable income multiplied by the applicable percentage.

~~(4)5~~ The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) ~~shall~~ apply.

~~(5)6~~ The current Medicaid Income Standards (BMS) are as follows:

TABLE	
Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

**KEY: financial disclosures, income, budgeting**

**Date of Enactment or Last Substantive Amendment: ~~July 2, 2005~~2006**

**Notice of Continuation: January 31, 2003**

**Authorizing and Implemented or Interpreted Law: 26-18-1**

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-504  
Nursing Facility Payments**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 28699  
FILED: 05/01/2006, 11:16

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to simplify and improve the accuracy of nursing facility rate calculations.

SUMMARY OF THE RULE OR CHANGE: This rulemaking amends the nursing facility payments rule by removing outdated verbiage and adding clarifying reimbursement information previously included only in the Medicaid State Plan.

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 impact to the state budget because the clarifications in this rulemaking do not change the amount of state and federal funds that will be distributed to regulated health care facilities.

❖ LOCAL GOVERNMENTS: There is no impact to the local governments because the clarifications in this rulemaking do not change the amount of state and federal funds that will be distributed to local government operated health care facilities.

❖ OTHER PERSONS: There is no budget impact to other persons because the clarifications in this rulemaking do not change the amount of state and federal funds that will be distributed to regulated health care facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to other persons because the clarifications in this rulemaking do not change the amount of state and federal funds that will be distributed to regulated health care facilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Inasmuch as the changes in this rule making are for clarification only, they will have no fiscal impact on businesses. A. Richard Melton, Acting 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:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2006

AUTHORIZED BY: Richard Melton, Deputy Director

#### **R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

##### **R414-504. Nursing Facility Payments.**

###### **R414-504-1. Introduction.**

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System) for nursing facilities that are not ICF/MRs. This system

reimburses facilities based on the case mix index of the facility. It also establishes rates for ICF/MR facilities.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

###### **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 ~~cost~~ 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 ~~most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation—Building and Improvement), 260 (Depreciation—Transportation Equipment), 270 (Depreciation—Equipment), 280 (Interest—Mortgage, Personal Property Furniture and Equipment—Small Items), 300 (Property Insurance).~~ Under a fair rental value (FRV) system, a facility is reimbursed on the basis of the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent/lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage 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) "Urban provider" means a facility located in a county which has a population greater than ~~[of more than]~~ 90,000 ~~[population]~~ persons.

(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, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity. This is used in the FRV calculation.

### **R414-504-3. Principles of Facility Case Mix Rates and Other Payments.**

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient[s] add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

~~[(2) Pending federal approval of the Medicaid rate adjustment, the request to allow the implementation of the Utah Nursing Care Facility Assessment Act, and consequent rules, the case mix rate in effect on July 2, 2004, as well as other components of the total rate will be the same as those in effect on June 30, 2004.~~

~~]~~ ~~([4]2) Each quarter, t[F]he Department shall calculate[s] a new case mix index for each nursing facility[ quarterly]. The case mix index is based on [3]three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:~~

~~(a) January, February and March MDS assessments are used for July 1 rates.~~

~~(b) April, May and June MDS assessments are used for October 1 rates.~~

~~(c) July, August and September MDS assessments are used for January 1 rates.~~

~~(d) October, November and December MDS assessments are used for April 1 rates.~~

~~[(e) To ensure the inclusion of all MDS assessments, the initial MDS dataset used to calculate case mix under this section includes all months not previously used in a case mix calculation.~~

~~— (3) Upon federal approval of the nursing care facility rate adjustment and the assessment pursuant to R414-504-3(2), rate components will be adjusted retroactively to July 2, 2004, to reflect the additional funding made available. The adjusted rate will be further adjusted retroactive to September 15, 2004 to include the application of a Fair Rental Value reimbursement system for property as addressed in R414-504-3(7).~~

] (3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure Certification and Resident Assessment~~[The Resident Assessment Section]~~ will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

~~[(7) Each facility's reimbursement interim rate effective July 2, 2004, includes a property payment of \$11.19 per patient day.~~

~~— (a) A facility with property costs greater than \$11.19 per patient day as reported on the most recent FCP may receive a property differential payment, as follows:~~

~~— (i) For facilities with the most recent FCP reported occupancy greater than 75%, the property differential is the FCP reported property cost divided by the sum of the number of Medicaid patient days and non-Medicaid patient days from which the \$11.19 base is subtracted. This can be algebraically stated as: (FCP reported property cost / (total number of Medicaid patient days + non-Medicaid patient days)) - \$11.19 = property differential.~~

~~— (ii) For facilities with an FCP reported occupancy less than 75%, the property differential is the FCP reported property cost divided by the number of licensed beds times 365 times .75 from which the \$11.19 base is subtracted. This can be algebraically stated as: (FCP reported property cost / (total number of licensed beds x 365 x .75)) - \$11.19 = property differential.~~

~~— (b) Regardless of the result produced under subsection (b), the property differential payment shall not exceed \$8.81 per patient day.~~

~~]~~ ~~([8]7) [Upon federal approval, p]Property costs [will]shall be calculated once per year, each July 1, and reimbursed as a component of the facility rate based on an FRV System[ effective September 15, 2004].~~

(a) Under this FRV system, the Department reimburses a facility based on the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent or lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

(i) The initial age of each nursing facility used in the FRV calculation is determined as of September 15, 2004, using each facility's initial year of construction.

(ii) The age of each facility is adjusted each July 1 to make the facility one year older.

(iii) The age is reduced for replacements, major renovations, or additions placed into service since the facility was built, as reported on the FRV Data Report, provided there is sufficient documentation to support the historical changes.

(A) If a facility adds new beds, these new beds are averaged into the age of the original beds to arrive at the facility's age.

(B) If a facility completed a major renovation (defined as a project with capitalized cost equal to or greater than \$500 per bed) or replacement project, the cost of the project is represented by an equivalent number of new beds.

(I) The renovation or replacement project must have been completed during a 24-month period and reported on ~~[the FCP (due March 31st)]~~ an FRV Data Report for the reporting period used for the [calendar year prior to a] July 1 rate year and be related to the reasonable functioning of the nursing facility. Renovations unrelated to either the direct or indirect functioning of the nursing facility shall not be used to adjust the facility's age.

(II) The equivalent number of new beds is determined by dividing the cost of the project by the accumulated depreciation per bed of the facility's existing beds immediately before the project.

(III) The equivalent number of new beds is then subtracted from the total actual beds. The result is multiplied by the difference in the year of the completion of the project and the age of the facility, which age is based on the initial construction year or the last reconstruction or renovation project. The product is then divided by the actual number of beds to arrive at the number of years to reduce the age of the facility.

(b) A nursing facility's fair rental value per diem is calculated as follows:

As used in this subsection (b), "capital index" is the percent change in the nursing home "Per bed or person, total cost" row and "3/4" column as found in the two most recent annual R.S. Means Building Construction Cost Data as adjusted by the weighted average total city cost index for Salt Lake City, Utah.

(i) The buildings and fixtures value per licensed bed is \$50,000, which is based upon a standard facility size of at least 450 square feet determined using the R.S. Means Building Construction Cost Data adjusted by the weighted average total city cost index for Salt Lake City, Utah. To this \$50,000 is added 10% (\$5,000) for land and 10% (\$5,000) for movable equipment. Each nursing facility's total licensed beds are multiplied by this amount to arrive at the "total bed value." The total bed value is trended forward by multiplying it by the capital index and adding it to the total bed value to arrive at the "newly calculated total bed value." The newly calculated total bed value is depreciated, except for the portion related to land, at 1.50 percent per year according to the weighted age of the facility. The maximum age of a nursing facility shall be 35 years. Therefore, nursing facilities shall not be depreciated to an amount less than 47.50 percent or 100 percent minus (1.50 percent times 35) of the newly calculated bed value. There shall be no

recapture of depreciation.

(ii) A nursing facility's annual FRV is calculated by multiplying the facility's newly calculated bed value times a rental factor. The rental factor is the sum of the 20-year Treasury Bond Rate as published in the Federal Reserve Bulletin using the average for the calendar year preceding the rate year and a risk value of ~~[3]three~~ percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than ~~[9]nine~~ percent or more than 12 percent.

(iii) ~~[t]~~The facility's annual FRV is divided by the greater of:

(A) the facility's annualized actual resident days during the cost reporting period; and

(B) ~~[75]Seventy-five~~ percent of the annualized operational bed capacity of the facility; however, the Department recognizes banked beds only as reported in the most recent FRV Data Report. For example, banked beds as reported on the FRV Data Report for the period ending February 28th/29th would be incorporated in the following July 1 FRV calculation.

(iv) The FRV per diem determined under this fair rental value system shall be no lower than \$8 per patient day.

~~[—(v) The FRV per diem determined under this fair rental value system shall be phased in using a hold-harmless method over a one-year period, as follows:~~

~~—(A) Nursing facility property rates are calculated under the fair rental value system and compared to rates in effect on July 2, 2004.~~

~~—(B) If the fair rental value system property rate is less than the nursing facility's July 2, 2004 rate, the nursing facility's rate is adjusted to additionally pay the nursing facility the difference between the September 15, 2004 rate and the July 2, 2004 rate, but not to exceed \$5 per patient day; and~~

~~—(C) the hold harmless method expires on June 30, 2005.]~~

(c) A pass-through component of the rate is applied and is calculated as follows:

~~[—(i) As used in this subsection (c), "property tax and property insurance index" is the percent change in the combined property tax and property insurance costs reported by the facility on its two most recent FCPs.~~

~~—(ii) For a newly constructed facility that has not made two FCP reports, the property tax and property insurance index is the average percent change in the combined property tax and property insurance costs reported by all facilities on their two most recent FCPs.~~

~~—(iii) The property tax and property insurance pass-through is trended forward by multiplying it by the property tax and property insurance index and adding it to the combined property tax and property insurance costs as reported on the most recent FCP to arrive at the pass-through amount.~~

~~]~~ ~~[(iv)]~~ The nursing facility's per diem property tax and property insurance cost is determined by dividing the sum of the facility's [pass-through amount] allowable property tax and property insurance costs, as reported in the most recent FCP or FRV Data Report, as applicable, by the facility's actual total patient days.

(ii) For a newly constructed facility that has not submitted an FCP or FRV Data Report that would be used in the rate period, the per diem property tax and property insurance is the state average daily property tax and property insurance cost of all facilities.

(8) Newly constructed facilities' case mix component of the rate shall be paid using the average case mix index. This average case mix index remains in place until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2). At the following quarter's rate setting, the Department shall issue a

new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(7).

~~[—(9) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(6). Prior to implementation of a fair rental value system, a newly constructed facility's property payment may not exceed \$20.00 per patient day.~~

](9) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter.

(a) The subsequent quarter's case mix index is established using the prior ownership facility MDS data until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2).

(b) The property component is calculated for the facility at the beginning of the next state fiscal year, as noted in R414-504-3(7).

~~[—(10) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. Prior to implementation of a fair rental value system, the new owners property payment may not exceed \$20.00 per patient day.~~

](1[+10) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be [the lesser of the facility's reasonable costs (as defined in CMS publication 15-1, Section 2102.2), or]7.5% above the average of the most recent [FCP]Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services [on]and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(1[2]1) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

(1[3]2) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

(13) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(14) Withholding of Title XIX payments

(a) The Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset.

(b) For ongoing operations, the Department will provide a 30-day notice before withholding payments. The Department may immediately withhold Title XIX payments without giving 30-days notice if it believes the delay may jeopardize the recovery. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection(a)(iv). The repayment schedule may not exceed 180 days.

**R414-504-4. Quality Improvement Incentive.**

(1) Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of \$500,000 shall be set aside annually to reimburse non-ICF/MR facilities that have a quality improvement plan and have 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. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, 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 remaining incentive payments will be distributed to all qualifying facilities.

(2) A facility that receives a substandard quality of care level F, H, I, J, K, or L during the July 1 through June 30 incentive period is eligible for only 50% of the possible payout.

**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) ~~[Approximately 93% of total payments paid in aggregate to ICF/MRs are based on a prospective flat rate. The balance of the total payments is attributable to a property cost component of the rate as]~~ The Department pays approximately 93% of the aggregate payments to ICF/MR s 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~~(8)~~.

~~—(2) Pending federal approval of the Medicaid rate adjustment for ICF/MRs, the rates in effect on July 1, 2005, will be the same as those in effect on June 30, 2005, inflated by 1%.~~

~~—(3) Upon federal approval of the ICF/MR rate adjustment, rate components will be adjusted retroactively to July 1, 2005, to reflect additional funding made available.~~

]

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~August 16, 2005~~ **2006**

**Authorizing and Implemented or Interpreted Law:** 26-1-5; 26-18-3

◆ ————— ◆

Health, Health Systems Improvement,  
Licensing  
**R432-6**  
Assisted Living Facility General  
Construction

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 28679

FILED: 04/27/2006, 07:38

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rulemaking removes the requirement for assisted living facilities to build a two-room laundry facility. The proposed rule would only require one room for laundry processing, combining the soiled and clean processes into the same room.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule amendments will change the requirements for assisted living facility construction of laundry facilities. It will take out the requirement for these facilities to have two separate rooms for laundry processing. The rule will still require that all other laundry processing requirements remain the same, and will add a dimension to the pre-wash sink to ensure that it is large enough to meet the needs of the facilities. The rule currently requires a soiled and clean laundry room to process laundry.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 21

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There is no anticipated cost to the state budget. This rule amendment will only affect providers of new assisted living facilities.

❖ **LOCAL GOVERNMENTS:** There is no anticipated cost to the local governments. This rule amendment will only affect providers of new assisted living facilities. No local governments operate assisted living facilities.

❖ **OTHER PERSONS:** There will be an anticipated cost savings to assisted living providers that are building new facilities. The average size of a soiled linen room is approximately 12' X 12'. The average construction cost per square foot is \$100, which adds up to a savings of approximately \$14,400 per new project. There are about five new assisted living projects that submit plans to the Department of Health every year. The overall savings to new providers is estimated at \$72,000 per year.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no cost to any persons from this rule amendment. The rule will decrease the construction requirements of assisted living facilities, resulting in a cost savings to new providers.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change will decrease construction costs without compromising resident safety. A. Richard Melton, Acting Executive Director

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT, LICENSING  
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:

Joel Hoffman at the above address, by phone at 801-538-6165, by FAX at 801-538-6163, or by Internet E-mail at jhoffman@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

**R432. Health, Health Systems Improvement, Licensing.**

**R432-6. Assisted Living Facility General Construction.**

**R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.**

(1) The HVAC system design shall prevent large temperature differentials, high velocity supply, excessive noise, and air stagnation.

(2) Air supply and exhaust in rooms for which no minimum total air change rate is mandated by Table 2 may vary to zero in response to room load.

(3) Mechanical ventilation shall be provided for interior spaces independent of thermostat-controlled demands.

(a) Minimum total air change, room temperature, and temperature control shall comply with standards in Table 2.

(b) To maintain asepsis and odor control, airflow supply and exhaust shall be controlled to ensure movement of air from clean to less clean areas.

(c) Rooms containing heat-producing equipment shall be insulated and ventilated to prevent the floor surface above or the walls of adjacent occupied areas from exceeding a temperature of ten degrees Fahrenheit above ambient room temperature.

(d) All rooms and occupiable areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and resident rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(e) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(f) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(g) Equipment must be available to provide essential heating during a loss of normal heating capability. All emergency heating devices shall be approved by the local fire jurisdiction.

(h) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable. Exhaust fans may be on the inlet side if individually ducted directly to the outside.

(i) Fresh air intakes shall be located at least 10 feet from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas subject to vehicular exhaust or other noxious fumes.

(j) All ventilation, air conditioning systems and air delivery equipment, including through wall units, shall be equipped with filters in accordance with Table 2.

(k) Gravity exhaust may be used where conditions permit for boiler rooms, central storage, and other nonresident areas.

(l) The ventilation system shall be air tested and balanced prior to the final Department construction inspection. The initial test results and air balancing report shall be maintained for Department review.

TABLE 2  
Ventilation Requirements

AREA DESIGNATION	AIR MOVEMENT IN RELATION TO ADJACENT AREAS	MINIMUM AIR CHANGES OF OUTDOOR AIR PER HOUR TO ROOM	MINIMUM TOTAL AIR CHANGES PER HOUR	ALL AIR EXHAUSTED OUTSIDE
Bath and Shower Rooms	N	Optional	10	YES
Clean Linen Storage	P	Optional	2	Optional
Dietary Day Storage	V	Optional	2	Optional
Food Preparation Center	E	2	10	YES
Janitors' Closets	N	Optional	10	YES
Laundry	V	2	10	YES
Corridor	E	Optional	2	Optional
Grooming Area	N	2	2	YES
Resident Room	E	Greater	2	Optional of one air change or minimum 20 CFM/person
Soiled Linen [ <del>Sorting and Storage</del> ]holding	N	Optional	10	YES
Toilet Rooms	N	Optional	10	YES
Ware Washing	N	Optional	10	YES
Common Areas	E	2	2	Optional

E = Equal; N = Negative; P = Positive; V = Variable

(m) The requirements of Table 2 do not apply to limited capacity facilities. Limited capacity facilities shall provide exhaust for kitchens and bathrooms.

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

(4) All areas for resident care, and those areas providing direct service or clean supplies shall provide at least one filter bed with a minimum of 30% efficiency.

(5) All administrative, bulk storage, soiled holding, food preparation and laundries shall provide at least one filter bed with a minimum of 25% efficiency.

#### **R432-6-210. Linen Services.**

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a building on or off-site, or in a commercial or shared laundry.

(2) If laundry is done off the site, the following shall be provided:

(a) a room for receiving and holding soiled linen until ready for pickup or processing;

(b) a central, clean linen storage room(s); and

(c) a lavatory in each area where unbagged, soiled linen is handled.

(3) If a large or small facility processes its own laundry on-site, the following shall be provided:

(a) a laundry room for receiving, holding, washing, drying, and sorting soiled linens, with the following:

(i) a pre-wash [clinical] sink at least 13 inches deep by 20 inches wide; [facilities]

(ii) [and] a separate hand washing [facilities] sink;

(b) (iii) [a laundry processing room with] washer(s) and dryer(s); and

and  
[c] rooms (a) and (b) above must be separated by a door with a self-closing device installed;

(d) (iv) storage for laundry supplies;

(e) (b) arrangement of equipment that will permit an orderly workflow and minimize cross-traffic that might mix clean and soiled operations; and

(f) (c) a central, clean linen storage room(s);

(g) Facilities may provide holding rooms on each level for bagged, soiled linen.]

(4) If a limited capacity facility processes its own laundry on-site, the following shall be provided:

(a) a room to store and process both clean and soiled linen;

(b) a washer and dryer; and

(c) a utility sink in the laundry room.

(5) Each facility shall provide a minimum of one washing machine, one clothes dryer, and ironing equipment in good working order for resident use.

#### **KEY: health facilities**

**Date of Enactment or Last Substantive Amendment:** ~~December 19, 2002~~ 2006

**Notice of Continuation:** January 8, 2004

**Authorizing and Implemented or Interpreted Law:** 26-21-5; 26-21-16

## Human Resource Management, Administration **R477-1** Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28692

FILED: 04/28/2006, 12:14

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule adds definitions and modifies others in order to be consistent with changes made to the Personnel Management Act in the 2006 General Session with the passage of H.B. 269 and modifies definitions to coincide with changes in the Department of Human Resource Management (DHRM) policies for corrective action, reassignment, transfer, and underfill. (DAR NOTE: H.B. 269 (2006) is found at Chapter 139, Laws of Utah 2006, and will be effective 07/01/2006.)

**SUMMARY OF THE RULE OR CHANGE:** There are two new definitions. The first in Subsection R477-1-1(3) reflects a new term added to Section 67-19-3 by H.B. 269 passed in the 2006 General Session. The use of this term is reflected in multiple changes in the DHRM rules and to two other definitions in Subsections R477-1-1(6) and R477-1-1(7). The second new definition is in Subsection R477-1-1(119) and is added to reflect a new definition in Section 67-19-3 which only effects Section R477-12-3. Two definitions are deleted: "Active Duty" which is a term that will no longer be used in the policy on military leave in Section R477-7-10; and "Constant Review" which is a management action that will no longer be part of the state policy for corrective action in Section R477-10-2. Modified definitions include: in Subsection R477-1-1(28) constant review is removed as a part of corrective action; Subsection R477-1-1(31) reflects a definition added to Section 67-19-3 by H.B. 269; Subsections R477-1-1(36) and R477-1-1(107) removes references to outdated recruitment practices; Subsection R477-1-1(89) is amended to reflect current practice in setting salary and retirement benefits; Subsections R477-1-1(102) and R477-1-1(121) reflect policy changes for these two Human Resource actions made possible by amendments to Title 67, Chapter 19 in H.B. 269; in Subsection R477-1-1(116) is a clarification of DHRM policy for employees with health conditions covered by the federal Americans with Disabilities Act and the Family and Medical Leave Act; and in Subsection R477-1-1(122) is an amendment that further restricts how management may use underfill status to fill vacant positions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

## ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Changes to the state policy on corrective action are designed to speed up this process. This has the possibility of relieving agencies of administrative time and cost when dealing with employees with performance issues.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by 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 saving 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 affect 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:

Conroy Whipple or Linda Cooper at the above address, by phone at 801-538-3067 or 801-538-3208, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at [cwhipple@utah.gov](mailto:cwhipple@utah.gov) or [LKCOOPER@utah.gov](mailto:LKCOOPER@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

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 from an employee's unexcused absence from work or failure to come to work for three consecutive days when the employee is capable, but does not properly notify his supervisor. [

~~— (2) **Active Duty:** Full time active military or reserve duty; a term used for veteran's preference adjustments. It does not include active or inactive duty for training or initial active duty for training.]~~

(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 salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(7) **Administrative Salary Decrease:** A [~~salary~~] decrease in the current actual wage of one or more [~~pay~~] salary steps based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) **Administrative Salary Increase:** [~~A salary~~] An increase in the current actual wage of one or more [~~pay~~] 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 Chapter 67-22 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 their designated appointee.

(11) **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.

(12) **Appeal:** A formal request to a higher level review for consideration of an unacceptable grievance decision.

(13) **Appointing Authority:** The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(14) **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.

(15) **Career Mobility:** A time limited assignment of an employee to a position of equal or higher salary range for purposes of professional growth or fulfillment of specific organizational needs.

(15) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(16) 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.

(17) Career Service Exempt Position: A position in state service exempted by law from provisions of competitive career service as prescribed in 67-19-15 and in R477-2-1(1).

(18) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.

(19) 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) low org;
- (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.

(20) 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.

(21) 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.

(22) 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.

(23) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

(24) Classification Study: A Classification review conducted by DHRM or an approved contract agency, under the rules outlined in R477-3-4. A study may include single or multiple job or position reviews.

(25) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

~~(26) Constant Review: A period of formal review of an employee, not to exceed six months, resulting from substandard performance or behavior, as defined by Utah law and contained in these rules. Removal from constant review requires a formal evaluation.~~

(27)26 Contract Agency: An agency with authority to perform specific HR functions as outlined in a formal delegation agreement with DHRM under authority of section 67-19-7.

(28)27 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 shall not accrue benefits.

~~(29)28 Corrective Action: A [written]documented administrative action to address substandard performance [or behavior] of an employee as described in R477-10-2. [Corrective action includes a period of constant review.]~~

(30)29 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.

(31)30 Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

~~(32)31 Demotion: [An action resulting in a salary reduction on the current salary range or the movement of an incumbent from one job or position to another job or position having a lower salary range, which may include a reduction in salary. Administrative adjustments and reclassifications are not included in the definition of a demotion.] A disciplinary action resulting in a reduction of an employee's current actual wage.~~

(33)32 Department: The Department of Human Resource Management.

(34)33 Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

(35)34 Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

(36)35 DHRM: The Department of Human Resource Management.

(37)36 DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which ~~[includes:]is a centralized and automated computer system administered by the Department of Human Resource Management.~~

~~—(a) continuous recruitment of all positions;~~

~~—(b) a centralized and automated computer database of resumes and related information administered by the Department of Human Resource Management;~~

~~—(c) decentralized access to the database based on delegation agreements.]~~

(38)37 Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (1994); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (1993); including exclusions and modifications.

(39)38 Disciplinary Action: Action taken by management under the rules outlined in R477-11.

(40)39 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 non-merit factor, as specified by law.

(41)40 Dismissal: A separation from state employment for cause.

(42)41 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.

(43)42 Employee Personnel Files: For purposes of Titles 67-18 and 67-19, the files maintained by DHRM and agencies as required by R477-2-6. This does not include employee information maintained by supervisors.

(~~44~~43) Employment Eligibility Certification: 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.

(~~45~~44) "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.

(~~46~~45) Equal Employment Opportunity (EEO): Nondiscrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

(~~47~~46) 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.

(~~48~~47) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

(~~49~~48) 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.

(~~50~~49) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

(~~51~~50) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

(~~52~~51) FLSA Nonexempt: Employees who are not exempt from the Fair Labor Standards Act.

(~~53~~52) 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.

(~~54~~53) Full Time Equivalent (FTE): The budgetary equivalent of one full time position filled for one year.

(~~55~~54) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(~~56~~55) 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.

(~~57~~56) 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.

(~~58~~57) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's paycheck stub.

(~~59~~58) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(~~60~~59) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.

(~~61~~60) HRE: Human Resource Enterprise; the state human resource management information system.

(~~62~~61) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

(~~63~~62) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(~~64~~63) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(~~65~~64) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(~~66~~65) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

(~~67~~66) 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.

(~~68~~67) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(~~69~~68) Job Identification Number: A unique number assigned to a job by DHRM.

(~~70~~69) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(~~71~~70) Job Requirements: Skill requirements defined a the job level.

(~~72~~71) 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.

(~~73~~72) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(~~74~~73) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(~~75~~74) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(~~76~~75) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

(~~77~~76) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(~~78~~77) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(~~79~~78) Nonfeasance: Failure to perform either an official duty or legal requirement.

(~~80~~79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(~~81~~80) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

([82]81) 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.

([83]82) 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.

([84]83) 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.

([85]84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, 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.

([86]85) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

([87]86) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

([88]87) Position Identification Number: A unique number assigned to a position for FTE management.

([89]88) 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.

([90]89) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. ~~[Salary, retirement service credits and leave]~~ 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.

([94]90) 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.

([92]91) Preemployment Drug Test: A drug test conducted on final candidates for a safety sensitive position or on a current employee prior to assuming safety sensitive duties.

([93]92) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

([94]93) 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.

([95]94) 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 FTE reductions and agency base budget reduction.

([96]95) Promotion: An action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

([97]96) 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.

([98]97) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of safety sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each safety sensitive employee has an equal chance of being selected for testing.

([99]98) Reappointment: Return to work of an individual from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in the employee's former position were cashed out upon separation.

([100]99) Reappointment Register: A register of individuals who have:

(a) held career service positions and been separated in a reduction in force;

(b) held career service positions 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.

([101]100) Reasonable Suspicion: Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

([102]101) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on reasonable suspicion that the employee may be under the influence of drugs or alcohol.

([103]102) Reassignment: A management initiated action moving an employee from his current job or position to a different job or position ~~[of an equal salary range]~~ for administrative ~~[, corrective action or other]~~ reasons not included in the definition of promotion or demotion ~~[, transfer or reclassification]~~. ~~[Management may also move an employee to a job or position with a lower salary range with employee written consent, when permitted by applicable federal or state law, including, but not limited to the Americans with Disabilities Act. A reassignment may be to one or more of the following:~~

— (a) a different job or position;

— (b) a different work location;

— (c) a different organizational unit; or

— (d) a different agency.]

([104]103) Reclassification: A DHRM or an approved contract agency reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities as determined by a classification study.

~~(105)~~104 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.

~~(106)~~105 Reemployment: Return to work of an employee who resigned from state employment to join the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at separation.

~~(107)~~106 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.

~~(107)~~ 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.

(108) Retaliation: An adverse employment action taken against an employee who has engaged in a protected activity. The adverse action must have a causal link.

~~(109) Return to Duty Drug or Alcohol Test: A drug or alcohol test conducted on an employee prior to allowing the employee to return to duty after successfully completing a drug or alcohol treatment program.~~

~~(110) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.]~~

~~(111)~~109 Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

~~(110) Return to Duty Drug or Alcohol Test: A drug or alcohol test conducted on an employee prior to allowing the employee to return to duty after successfully completing a drug or alcohol treatment program.~~

~~(112)~~111 Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

~~(113)~~112 RIF'd Individual: A former employee who is terminated as a result of a reduction in force.

~~(114)~~113 Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

- (a) directly related to law enforcement; or
- (b) involving direct access or having control over direct access to controlled substance; or
- (c) directly impacting the safety or welfare of the general public; or
- (d) which require an employee to carry or have access to firearms.

~~(115)~~114 Salary Range: The segment of an approved pay plan assigned to a job.

~~(116)~~115 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).

~~(117)~~116 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.

~~(118)~~117 Sexual Harassment:

(a) A form of unlawful discrimination of a sexual nature which is unwelcome and pervasive, demeaning, ridiculing, derisive or coercive and results in a hostile, abusive or intimidating work environment.

- (i) Level One: sex role stereotyping
- (ii) Level Two: targeted gender harassment/discrimination
- (iii) Level Three: targeted or individual harassment
- (iv) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

(b) Any quid pro quo behavior which requires an employee to submit to sexual conduct in return for increased employment benefits or under threat of adverse employment repercussions.

~~(119)~~118 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.

~~(119) Temporary employee: A career service exempt employee on schedule AI, AJ, or AL.~~

(120) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

(121) Transfer: An employee initiated movement from one job or position to another job or position for which the employee qualifies in response to a recruitment for reasons not included in the definition of promotion. [A transfer may be to one or more of the following:

- ~~(a) a job or position with the same salary range;~~
- ~~(b) a job or position with a lower salary range;~~
- ~~(c) a different work location;~~
- ~~(d) a different organizational unit; or~~
- ~~(e) a different agency.]~~

(122) Underfill: DHRM authorization ~~[for an agency]~~ to fill a position ~~[at a lower salary range within]~~ below the designated working level within the same job series.

(123) 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, or 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; absence from work for an examination to determine fitness for any of the above types of duty.

(124) Unlawful Harassment: Any behavior or conduct of an unlawful nature based on race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes that is unwelcome, pervasive, demeaning, derisive or coercive and results in a hostile, abusive or intimidating work environment or tangible employment action.

(125) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who left state employment to enter 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.

(126) 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.

(127) 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.

(128) 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 2, 2004~~ **2006**

**Notice of Continuation:** June 11, 2002

**Authorizing, and Implemented or Interpreted Law:** 67-19-6

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## Human Resource Management, Administration **R477-2** Administration

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28689

FILED: 04/28/2006, 11:02

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment updates the naming of state and federal agencies referenced in the rule, implements a policy change governing medical records in the employee file, and eliminates the Quality Service Award.

**SUMMARY OF THE RULE OR CHANGE:** Section R477-2-1 replaces references to the Department of Community and Economic Development with the Governor's Office of Economic Development and lists the Medical Education Council as an agency exempt from these rules. The change in Section R477-2-5 deletes references to the Immigration and Naturalization Services replacing it with the United States Bureau of Citizenship and Immigration Services. Agencies are required to begin keeping a separate file for results of fitness for duty and drug tests and requires agencies to transfer this file and the confidential medical file to the receiving agency when the employee transfers to another state agency. Section R477-5-10 is deleted. H.B. 269 eliminated the mandate given to the Department of Human Resource Management (DHRM) to implement and administer this award. (DAR NOTE: H.B. 269 (2006) is found at Chapter 139, Laws of Utah 2006, and will be effective 07/01/2006.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 52-3-1; Subsections 63-2-204(5) and 63-2-903(4); and Sections 67-19-3 and 67-19-18

### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** These amendments can be handled within existing administrative procedures and will not result in additional costs for agencies.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These amendments will only affect state agencies within the executive branch of government and can be handled within existing administrative procedures. 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.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by 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 saving 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 affect 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:

Linda Cooper or Conroy Whipple at the above address, by phone at 801-538-3208 or 801-538-3067, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at [LKCOOPER@utah.gov](mailto:LKCOOPER@utah.gov) or [cwhipple@utah.gov](mailto:cwhipple@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.**

**R477-2. Administration.**

**R477-2-1. Rules Applicability.**

These rules apply to all career and career service exempt state employees except those specifically exempted in Section 67-19-12.

(1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in R477-3 and R477-6.

(2) Nonstate agencies with employees protected by the career service provisions of these rules in 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) attorneys in the Attorney General's Office;
- (g) agency heads and other persons appointed by the governor when authorized by statute;
- (h) employees of the ~~[Department of Community and Economic Development]~~ Governor's Office of Economic Development whose positions have been designated executive/professional by the executive director of the ~~[Department of Community and Economic Development]~~ 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 provisions of these rules except rules governing career service status in 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.

**R477-2-5. Records.**

(1) DHRM shall maintain a 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, and other personal data, status or standing.

(2) Agencies shall maintain the following records in each employee's personnel file:

- (a) applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by the United States Bureau of Citizenship and Immigration Services ~~[Immigration and Naturalization Service (INS)]~~ Regulations, under the Immigration Reform and Control Act of 1986, 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 records, including employee benefits notification forms for PEHP and URS;

(b) references to or copies of transcripts of academic, professional, or training certification or preparation;

(c) 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) 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) Agencies shall maintain a separate file from the personnel file containing ~~[if the agency obtains]~~ confidential employee medical information.

(a) Information in this file shall include all written and orally obtained information pertaining to medical issues, including Family Medical and Leave Act forms, medical and dental enrollment forms which contain health related information, health statements, applications for additional life insurance, ~~[fitness for duty evaluations, drug testing results,]~~ and any other medical information.

(b) Information 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.

~~(b)(c)~~ Information in this file is considered private or controlled information. Communication shall adhere to the Government Records Access and Management Act, Section 63-2-101.

~~(e)(d)~~ An employee who violates confidentiality is subject to state disciplinary procedures.

(4) An employee has the right to review the employee's personnel file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) An employee may correct, amend, or challenge any information in the DHRM computerized or agency personnel file, through the following process:

- (i) The employee shall request in writing 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.

(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 and the authority for the action.

(6) Upon employee separation, DHRM and agencies shall retain computerized records for thirty years. Agency hard copy records shall be retained by the agency for a minimum of two years, then transferred to the State Record Center to be retained according to the record retention schedule.

(7) 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 written consent.

(8) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. Requests for information shall be in writing. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate with the exception of employees whose records are private or protected:

(a) the employee's name;  
 (b) gross compensation;  
 (c) salary range;  
 (d) contract fees;  
 (e) the nature of employer paid benefits;  
 (f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;  
 (g) job title;  
 (h) performance plan;  
 (i) education and training background as it relates to qualifying the individual for the position;  
 (j) previous work experience as it relates to qualifying the individual for the position;  
 (k) date of first and last employment in state government;  
 (l) the final disposition of any appeal action by the Career Service Review Board;

(m) the final disposition of any disciplinary action;  
 (n) work location;  
 (o) a work telephone number;  
 (p) city and county of residence, excluding street address;  
 (q) honors and awards as they relate to state government employment;

(r) number of hours worked per pay period;

(s) gender;

(t) other records as approved by the State Records Committee.

(9) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel and medical~~original~~ file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

(10) An employee may request a copy of any documentary evidence used for disciplinary purposes in any formal hearing, regardless of the document's source, prior to such use. This shall not apply to documentary evidence used for rebuttal.

(11) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to the Government Records Access and Management Act, Section 63-2-101. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

(12) 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 agency human resource manager or authorized manager in DHRM shall make the determination.

(13) 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 written request has been evaluated and approved.

#### **R477-2-7. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).**

(1) All career and career service exempt employees appointed on and after November 7, 1986, as a new hire, rehire, agency transfer or through reciprocity with or assimilation from another career service jurisdiction must provide verifiable documentation of their identity and eligibility for employment in the United States as required under the Immigration Reform and Control Act of 1986.

(2) Agency hiring officials are responsible for verifying the identity and employment eligibility of these employees, by completing all sections of the Employment Eligibility Certification Form I-9 in conformance with United States Bureau of Citizenship and Immigration Services (BCIS) Regulations. The I-9 form shall be maintained in the agency personnel file.

#### **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 employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, ~~Office~~Division of Risk Management.

(1) In most cases, under provisions of the Governmental Immunity Act (GIA), Sections 63-30-36, 63-30-37, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) If a law suit results against an employee, the GIA stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

#### **~~R477-2-10. Quality Service Award.~~**

~~When requested by the Director, agencies shall assign employees to serve on the Utah Quality Award Evaluation Panel according to criteria established by section 67-19-6.4 and DHRM.~~

#### **R477-2-~~11~~10. Alternative Dispute Resolution.**

Agency management may establish a voluntary alternative dispute resolution program in accordance with Chapter 63-46C, Utah Code Annotated.

**KEY: administrative responsibility, confidentiality of information, fair employment practices, public information**

**Date of Enactment or Last Substantive Amendment: ~~July 2, 2005~~2006**

**Notice of Continuation: June 11, 2002**

**Authorizing, and Implemented or Interpreted Law: 52-3-1; 63-2-204(5); 63-2-903(4); 67-19-6; ~~67-19-6.4~~; 67-19-18**



Human Resource Management,  
 Administration

**R477-4**  
 Filling Positions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28691

FILED: 04/28/2006, 11:07

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule implement some aspects of a policy change for reassignment and transfer, implement selected provisions of H.B. 213 passed in the 2005 General Session and H.B. 269 passed in the 2006 General Session, and include federal guidelines for veterans preference in hiring. (DAR NOTE: H.B. 213 (2005) is found at Chapter 15, Laws of Utah 2005, and was effective 01/01/2006. H.B. 269 (2006) is found at Chapter 139, Laws of Utah 2006, and will be effective 07/01/2006.)

SUMMARY OF THE RULE OR CHANGE: Section R477-4-6 now provides for an employee to be reassigned to another position without a reduction in the current actual wage, and defines a transfer or reassignment. Section R477-4-7 clarifies that an employee who returns to work within a year will have sick leave reinstated but it will be placed in the employee's program II account. Sections R477-4-8 and R477-4-9 are amended to remove the option to negotiate delegation agreements with agencies for recruitment and testing and include federal guidelines for providing veterans preference on the final hiring lists.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Agencies can implement these amendments within existing administrative procedures and no additional cost is anticipated.
- ❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments. 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.
- ❖ OTHER PERSONS: This rule only affects the executive branch of state government and will have no impact on other persons. 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.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies within the executive branch of 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.

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 saving 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 affect 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:

Linda Cooper or Conroy Whipple at the above address, by phone at 801-538-3208 or 801-538-3067, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at LKCOOPER@utah.gov or cwhipple@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.****R477-4. Filling Positions.****R477-4-6. Transfer and Reassignment.**

(1) Positions may be filled by reassigning an employee without a reduction in ~~pay~~ the current actual wage ~~[for administrative reasons or corrective action pursuant to R477-10-2]~~ except as provided in R477-4(6).

(2) The agency that receives a transfer or reassignment of an employee shall verify his career status and that the employee meets the job requirements for the position.

(a) 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) 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) 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) A reassignment or transfer may be to one or more of the following:

- (a) a different job or position;
- (b) a different work location;
- (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.

(a) A rehired employee must compete through the DHRM approved recruitment and selection system and must serve a new probationary period, as designated in the official job description.

(i) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.

(ii) An employee who is rehired within 12 months of separation to a position which receives sick leave benefits shall have his previously accrued sick leave credit reinstated as program II sick leave.

(b) A rehired employee may be offered any salary within the ~~regular~~ 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. These maximums shall be included in the agency's recruitment notice. [

~~(4) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and administer examination instruments, subject to periodic administrative audits by DHRM.]~~

#### **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 he is determined to be both qualified for and interested in a particular position identified through a specific requisition.

(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) Five percent of the total possible score shall be added to ~~[the rating or an appropriate adjustment shall be made on the hiring list]~~ [the exam score or an appropriate adjustment shall be made when examination results are other than a numeric score for any applicant claiming veterans preference who:

(a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or

(b) is the spouse ~~[or unremarried surviving spouse], unremarried widow or widower~~ of any veteran.

(5) Ten percent of the total possible score shall be added to ~~[the rating or an appropriate adjustment shall be made on the hiring list]~~ [the exam score or an appropriate adjustment shall be made when examination results are other than a numeric score for any applicant claiming veterans preference who:

(a) was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty; or

(b) is the spouse ~~[or unremarried surviving spouse], unremarried widow or widower~~ of any disabled veteran. [

~~(6) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and maintain hiring lists and certify eligible applicants to their appointing authorities, subject to periodic administrative audits by DHRM.]~~

(7) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

(8) 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.

(9) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

**KEY: employment, fair employment practices, hiring practices**  
**Date of Enactment or Last Substantive Amendment: [July 2, 2005]2006**

**Notice of Continuation: June 11, 2002**

**Authorizing, and Implemented or Interpreted Law: 67-19-6**

## Human Resource Management, Administration

### **R477-5**

## Employee Status and Probation

### **NOTICE OF PROPOSED RULE (Amendment)**

DAR FILE No.: 28681

FILED: 04/28/2006, 10:48

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment changes one word to ensure consistency throughout the Department of Human Resource Management (DHRM) rules.

SUMMARY OF THE RULE OR CHANGE: In Section R477-5-3, the word "pay" is changed to "salary". This is part of a change throughout the DHRM rules to distinguish between the words pay and salary and ensure consistency in their usage.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-3 and Subsection 67-19-16(5)(b)

## ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: DHRM enforcement and practice will continue as before with this change; the amendment simply changes one word for the sake of consistency throughout the DHRM rules. Thus, there are no costs or savings.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ OTHER PERSONS: This rule only affects the executive branch of state government and will have no impact on other persons. 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.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies in the executive branch of 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.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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 saving 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 affect 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:

Linda Cooper or Conroy Whipple at the above address, by phone at 801-538-3208 or 801-538-3067, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at LKCOOPER@utah.gov or cwhipple@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.****R477-5. Employee Status and Probation.****R477-5-3. Temporary Transitional Position.**

(1) An employee on probation who is temporarily disabled may be placed in another position with lighter duty or reduced responsibility and [pay]salary.

(a) This accommodation shall occur for no longer than one year from the date of disability.

(b) Time spent in a transitional position does not reduce the required probationary period in the primary position.

**KEY: employment, personnel management, state employees**

**Date of Enactment or Last Substantive Amendment: ~~July 1, 2003~~ 2006**

**Notice of Continuation: June 11, 2002**

**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.: 28688

FILED: 04/28/2006, 10:57

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule remove language that is obsolete or no longer required by Utah Code; make multiple wording adjustments to ensure consistent usage in the rules; implement portions of the changes to the state policy for transfer and reassignment; make nonsubstantive changes to the wording in the section for incentive awards; and provide a severance benefit for schedule AT employees.

**SUMMARY OF THE RULE OR CHANGE:** Section R477-6-4 is amended to remove the Highest Level Performer program from rules and the mandate for market comparability increases (MCI). The language for MCIs was required by the 2005 legislature but is not needed for 2006. There are also multiple changes in the use of the words "pay", "salary", and "actual wage" in order to gain consistency and more precision in the rules governing compensation. These words are being used interchangeably throughout this section and in other parts of the rules. Nonsubstantive amendments to the wording in Section R477-6-5 ensure consistent usage of the terms agency and award. The amendment to Section R477-6-9 gives the same severance benefit to an AT employee who is reassigned to a position with a lower salary range as certain other schedule A employees receive.

**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:**

❖ **THE STATE BUDGET:** The severance benefit provided to schedule AT employees in Section R477-6-9 will add cost to the Department of Technology Services if management elects to lower the salary of a reassigned employee in those situations where this is allowed by law. It is anticipated that these situations will be few and it is impossible to predict what the cost may be.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

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**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 saving 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 affect on business. Jeff Herring, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.**

**R477-6. Compensation.**

**R477-6-4. Salary.**

(1) Merit increases. The following are applicable if merit increases are authorized and funded by the legislature:

(a) Employees who are not on a longevity step and who are not at the maximum step of their salary range, who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a merit increase of one or more salary steps at the beginning of the new fiscal year.

(b) Employees designated as schedule AE, AI and AL who are receiving benefits are eligible for merit step increases.

(c) Employees designated as schedule AJ are not eligible for merit step increases. [

~~(2) Highest Level Performer.~~

~~(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10-1(2) shall receive, as determined by the agency head, either:~~

~~(i) a salary step increase; or~~

~~(ii) a bonus; or~~

~~(iii) administrative leave; or~~

~~(iv) other appropriate recognition as determined by the agency.~~

~~(b) An employee who is on a longevity step or at the maximum step of the salary range is not eligible for a salary step increase but may receive a bonus, administrative leave or other appropriate recognition as determined by the agency.]~~

([3]2) Promotions and Reclassifications.

(a) An employee promoted or reclassified to a job 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 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(4).

(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 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.

(~~4~~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 lower salary range shall retain the current ~~salary~~ actual wage.

(e) An employee on a longevity step who is promoted or reclassified to a higher salary range shall only receive an increase if the current ~~salary step~~ actual wage is less than the highest salary step of the new range.

(f) Agency heads or time limited exempt employees identified in R477-4-~~11~~10 are not eligible for the longevity program.

(~~5~~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, shall not receive an adjustment in ~~salary~~ the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in ~~a salary~~ an increase in the current actual wage unless the employee is below the minimum step of the new range.

(~~6~~5) Reassignment.

~~When~~ An employee's current actual wage may only be lowered when permitted by federal or state law, including but not limited to the Americans with Disabilities Act, ~~management may lower the salary of an employee one or more steps when the employee is reassigned to a position with a salary range having a lower maximum step~~.

(~~7~~6) Transfer.

Management may increase or decrease the ~~salary~~ current actual wage of an employee who initiates a transfer to another position consistent with R477-6-4.

(~~8~~7) Demotion.

An employee demoted consistent with R477-11-2 shall receive a ~~salary~~ 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 ~~salary~~ reduction in the current actual wage.

(~~9~~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 ~~a salary~~ 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) the agency human resource representative approves;

(vi) the position will be abolished from the position authorization plan 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.

(~~10~~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.

(~~11~~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. ]

~~—(12) Market comparability adjustments shall be given on July 2, 2005 to all career service employees who qualify. Non-career service employees who receive benefits and whose job title is assigned to a benchmark job shall also receive this increase.~~

~~—(a) A one step increase shall be given to employees whose benchmark job is determined to be 15 percent to 30 percent below the market based on actual average pay.~~

~~—(b) A two step increase shall be given to employees whose benchmark job is determined to be 30.1 percent or more below the market based on actual average pay.~~

~~—(c) Employees on the top of the established pay range or in longevity are not eligible for this increase.]~~

#### **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 shall 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 incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) ~~[Agencies]~~An agency may grant a cash incentive award to an employee or group of employees who:

(A) demonstrate 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 be approved by the agency head or designee. They must be documented and a copy shall be maintained in the agency's individual employee file.

(b) Noncash Incentive Awards

(i) ~~[Agency heads]~~An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards shall not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may not include cash equivalents such as gift certificates or tickets for admission.

(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

~~[Agencies]~~An agency may ~~[give]~~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 ~~[pay]~~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 ~~[pay]~~award a bonus to a qualified job candidate to convince the candidate to work for the state.

(c) Scarce Skills Bonus

An agency may ~~[pay]~~award a bonus to a qualified job candidate that has the scarce skills required for the job.

(d) Relocation Bonus

An agency may ~~[pay]~~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 ~~[pay]~~award a bonus to a current employee who refers a job applicant who is subsequently selected and is successfully employed for at least six months.

#### **R477-6-9. Severance Benefit.**

(1) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a benefit equal to:

(a) one week of ~~[pay]~~salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

(2) A severance benefit shall not be paid to an employee:

(a) whose statutory term has expired without reappointment;

(b) who is retiring from state service; or

(c) who is discharged for cause.

(3) A benefits eligible career service exempt employee on schedule AB, AD, ~~[or]~~AR or AT who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between the current ~~[hourly rate of pay]~~actual wage and the new ~~[hourly rate of pay]~~actual wage multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.

(4) An employee on schedule AC, AK, AM or AS may be provided these same severance benefits at the discretion of the appointing authority.

**KEY: salaries, employee benefit plans, insurance, personnel management**

**Date of Enactment or Last Substantive Amendment: ~~[July 2, 2005]~~2006**

**Notice of Continuation: June 11, 2002**

**Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)**

◆ ————— ◆

Human Resource Management,  
Administration  
**R477-7**  
Leave

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28690

FILED: 04/28/2006, 11:06

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule make several clarifications and revisions to the state policies on leave benefits. These include clarifications on: policy changes with the implementation of H.B. 213 as passed in the 2005 General Session; administrative leave to vote in an election; and funeral leave. Significant amendments are made to the annual leave conversion program, military leave, and family and medical leave. (DAR NOTE: H.B. 213 (2005) is found at Chapter 15, Laws of Utah 2005, and was effective 01/01/2006.)

**SUMMARY OF THE RULE OR CHANGE:** Sections R477-7-1 and R477-7-17 are amended to make it clear that an employee who retires will no longer be paid in cash for converted sick leave. This is one of the provisions of H.B. 213 (2005). In Section R477-7-3, the annual leave conversion program is deleted from rule. This program is contingent on funding by the legislature which has not happened since the first year this provision was placed in code (1993). This is creating much confusion among employees. If the legislature funds this program at some point in the future, these section will be placed back in rule. The amendment to Section R477-7-4 clarifies that sick leave is accrued in proportion to time paid. This clarification will aid payroll technicians in the agencies. Section R477-7-7 is amended with new language granting employees in certain situations administrative leave to vote in an election. This language is moved from here from Section R477-8-2. There are three policy changes to the state's leave benefits. First, Section R477-7-9 is changed to bereavement leave. This amendment gives management discretion to grant up to 24 hours to grieve the death of a family member, not just attend the funeral. Second, Section R477-7-10 is almost completely revised to comply with changes in federal guidelines. These amendments mostly clarify an employees rights for military service of less than 31 days, 31 to 181 days, and more than 180 days. Third, Section R477-7-15 is amended at the request of state agencies to reverse a policy implemented in 2005. In January 2005, the state adopted a "rolling" year method of tracking the use of family and medical leave. This proved to be difficult for agencies to administer and several requested that the state return to the "calendar year" method. In order to do this, the rule must be effective at the beginning of the calendar year or on January 1, 2007. This new policy also gives an employee the option to use the Family and Medical Leave Act (FMLA) leave in conjunction with other leave to maintain an income while on leave or to use FMLA leave as leave without pay.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-43-103, 49-9-203, 63-13-2, 67-19-6, 67-19-12.9, and 67-19-14.5

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The current FMLA policy requires agencies to invest a great deal of staff time to administer. It is anticipated that the new policy will be less demanding of staff resources thus creating administrative savings. This will not likely translate into budget savings however. It will be treated as opportunity savings and staff time will be diverted into other needed activities.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

**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 saving 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 affect 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:

Linda Cooper or Conroy Whipple at the above address, by phone at 801-538-3208 or 801-538-3067, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at LKCOOPER@utah.gov or cwhipple@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Jeff Herring, Executive Director

### **R477. Human Resource Management, Administration.**

#### **R477-7. Leave.**

##### **R477-7-1. Conditions of Leave.**

(1) An employee who normally works 40 hours or more per pay period, except those identified as career service exempt in R477-4-10, is eligible for leave benefits. An employee receives leave benefits in proportion to the time paid.

(a) An eligible employee who works 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time paid.

(b) 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, 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 and sick leave.

(8) An employee separating from state service shall be paid in a lump sum for all annual leave[~~;~~ and excess hours[ ~~and converted sick leave~~]. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.[ ~~A retiring employee shall be paid for all eligible accrued leave.~~]

(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) Converted sick leave for a retiring employee shall be subject to R477-7-5.

(a)(b) 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.

(b)(c) No leave on leave may accrue or be paid on the cashed out leave.

(e)(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) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in R477-7-5(2) and the Retirement Benefit in R477-7-6.

#### **R477-7-3. Annual Leave.**

(1) An 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 accrual rate for an employee rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.

(3) An eligible employee may begin to use annual leave after completing the equivalent of two full pay periods of employment.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year. [~~]~~

~~— (6) An employee may elect to convert unused annual leave to a 401(k) or 457 deferred compensation program sponsored by the Utah State Retirement Board when funded by the legislature.~~

~~— (a) Only hours accrued in excess of 320 hours after the end of the last pay period of the leave year are eligible for conversion.~~

~~— (b) The election to convert may only be made after the end of the last pay period of the leave year as determined by the Division of Finance.~~

~~— (c) The conversion shall be in whole hour increments.~~

~~— (d) An employee may convert up to 20 hours or \$250 in value, whichever is less.~~

~~— (e) The value of the converted leave may not cause the contribution to the 401(k) or 457 account to exceed the maximum authorized by the Internal Revenue Code.]~~

(7)(6) [After the conversion in R477-7-3(5), unused]Unused accrued annual leave time in excess of 320 hours shall be forfeited [at the beginning of the first full pay period of]during year end processing for each calendar year.

(8)(7) The maximum annual leave accrual rate shall be granted to a certain employee under the following conditions:

(a) an employee on the Executive Pay Plan, as described in 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 as defined in R477-7-1.

#### **R477-7-4. Sick Leave.**

(1) An employee shall accrue sick leave with pay [at the rate of four hours]in proportion to the time paid each pay period, not to exceed four hours. Sick leave shall accrue without limit.

(2) An employee may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(3) Sick leave shall 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 or dependents living in the employee's home;

(b) FMLA purposes under R477-7-15; or

(c) exceptions for other unique medical situations.

(4) An employee shall arrange for a telephone report to supervisors at 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. 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) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions:

(a) an approved leave without pay status, not to exceed 12 months;

(b) an approved Family Medical Leave Status; or

(c) in an annual or other accrued leave status.

(7) After filing a resignation notice, an employee must support a sick leave request with a doctor's certificate.

(8) An employee separating from state service may not receive compensation for accrued unused sick leave unless retiring.

(a) An employee who is rehired within 12 months of separation to a position that receives sick leave benefits shall have previously accrued unused sick leave credit reinstated.

(b) An employee who retires from state service and is rehired may not reinstate unused sick leave credit.

#### **R477-7-7. Administrative Leave.**

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to eight hours per occurrence;

(ii) administrative leave in excess of eight hours may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(d) student educational assistance.

(e) An employee who satisfies the criteria in this subsection shall be granted up to two hours of administrative leave to vote in an official election.

(i) The employee must:

(A) have fewer than three total hours off the job between the time the polls open and close, and;

(B) apply for the time in the previous 24 hours.

(ii) Management may specify the hours when the employee may be absent.

(f) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(2) With the exception of administrative leave used as a reward, as described in R477-7(1)(c), the agency head or designee may grant paid administrative leave up to ten consecutive working days per occurrence. Administrative leave in excess of ten consecutive working days per occurrence may be granted by the agency head.

(3) Administrative leave taken must be documented in the employee's leave record.

#### **R477-7-9. ~~Funeral~~Bereavement Leave.**

An employee may receive a maximum of 24 hours ~~funeral~~bereavement leave per occurrence with pay, at management's discretion, ~~to attend the funeral~~following the death of a member of the employee's immediate family. ~~Funeral~~Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship~~of the same degree~~ as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

#### **R477-7-10. Military Leave.**

One day of military leave is the equivalent to the employee's normal workday but not to exceed eight hours.

(1) An employee who is a member of the National Guard or Military Reserves is entitled to paid military leave not to exceed 15 days per calendar year ~~without loss of pay, annual leave or sick leave~~. An employee shall be on official military orders and may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) After the first 15 days, officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.

(a) An employee may use accrued leave while on active duty.

(i) Accrued sick leave may only be used if the reason for leave meets the conditions in R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave he would otherwise be eligible to receive.

~~(3)4~~ An employee shall give notice of ~~active military service~~official military orders as soon as ~~notified~~possible.

~~(4)5~~ Upon ~~separation~~release from active military service under honorable conditions, an employee shall be ~~placed in the original position or one of like seniority, status and pay~~. The ~~cumulative length of time allowed for reemployment may not~~

~~exceed five years. An employee is entitled to reemployment rights and benefits including increased pension and leave accrual. An employee entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, an employee shall present evidence of military service and leave without pay status, and be placed in a position in the following order of priority.~~

~~(a) [for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight hour rest period;] If the period of service was for less than 91 days, the employee shall be placed:~~

~~(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or~~

~~(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.~~

~~(b) [for service of more than 31 days but less than 181 days, submit an application for reemployment within 14 days of release from service; or] If the period of service was for more than 90 days, the employee shall be placed:~~

~~(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or~~

~~(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.~~

~~(c) [for service of more than 180 days, submit an application for reemployment within 90 days of release from service.] The cumulative length of time allowed for reemployment may not exceed five years. An employee is entitled to reemployment rights and benefits including increased pension and leave accrual. An employee entering military leave may elect to have payment for annual leave deferred.~~

~~(6) In order to be reemployed, an employee shall present evidence of military service, and:~~

~~(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;~~

~~(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or~~

~~(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.~~

#### **R477-7-11. Disaster Relief Volunteer Leave.**

(1) An employee may be granted leave from work with pay for an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the American Red Cross;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide for the American Red Cross; and

(d) the nature and location of the disaster where the employee's services will be provided.

#### **R477-7-15. Family and Medical Leave.**

These sections, R477-7-15(1) through R477-7-15(10), are effective until January 1, 2007.

(1) An employee is entitled to 12 weeks of family and medical leave in a 12 month period.

(a) The amount of FMLA leave available to an employee shall be 12 weeks minus any FMLA leave used in the immediately preceding 12 month period.

(b) Agency management shall approve FMLA leave for any of the following reasons:

(i) birth of a child;

(ii) adoption of a child;

(iii) placement of a foster child;

(iv) a serious health condition of the employee; or

(v) care of a spouse, dependent child, or parent with a serious medical condition.

(c) 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.

(2) To be eligible for family medical leave, the employee must:

(a) be employed by the state for at least 12 months;

(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; and

(c) apply in writing to the agency when the reason for requesting family medical leave changes in the course of a year.

(3) An employee, or an appropriate spokesperson, shall submit a leave request:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as possible in emergencies.

(4) Agency Responsibility

(a) Agency management shall be responsible for:

(i) documenting employee leave requests which qualify as FMLA leave; and

(ii) designating any qualifying leave taken by an employee as FMLA leave. All leave requests which qualify as FMLA leave shall be designated as such and shall be subject to all provisions of this rule; and

(iii) notifying an employee orally or in writing of the designation within two business days, or as soon as a determination can be made that the leave request qualifies as FMLA leave if the agency does not initially have sufficient information to make a determination.

(A) An oral notice must be confirmed in writing no later than the following payday.

(B) If the payday is less than one week after the oral notice, then written notice must be issued by the subsequent payday.

(b) Written notification to an employee shall include the following information:

(i) that the leave will be counted against the employee's annual FMLA entitlement;

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

(iii) a statement explaining which types of leave the employee will be required to exhaust before going into a LWOP status;

(iv) the requirement for the employee to make premium payments to maintain health benefits, the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

(v) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's

unpaid FMLA leave if the employee fails to return to work after taking FMLA leave;

(vi) any requirement for the employee to present a fitness for duty certificate to be restored to employment; and

(vii) the employee's rights to restoration to the same or an equivalent job upon return from leave.

(c) Agencies may designate FMLA leave after the fact only:

(i) if the reason for leave was previously unknown, provided the reason for leave is made known within two business days after the employee's return to work; or

(ii) if the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.

(d) Agencies shall allow the employee at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable.

(e) Agencies shall inform Group Insurance that an employee is approved for FMLA leave.

(5) An employee shall be required to exhaust accrued annual leave, sick leave, converted sick leave and excess hours prior to going into leave without pay status for the family and medical leave period. An employee who takes family and medical leave in a leave without pay status must comply with R477-7-13.

(a) An employee may choose to use compensatory time for an FMLA reason. Any period of leave paid from the employee's accrued compensatory time account may not be counted against the employee's FMLA leave entitlement.

(6) An employee shall be eligible to return to work under 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) 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.

(7) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(8) Leave required for certified medical reasons may be taken intermittently.

(9) Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Use of accrued paid leave shall not be required for FMLA leave at the same time the employee is collecting a workers' compensation benefit.

(10) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of R477-2-5(6).

These sections, R477-7-15(1) through R477-7-15(11), are effective on January 1, 2007.

(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.

(2) 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.

(3) 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.

(4) To be eligible for family and medical leave, the employee must:

(a) be employed by the state for at least 12 months;

(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.

(5) When an employee chooses to use 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 in emergencies.

(6) 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. An employee who takes family and medical leave in a leave without pay status must comply with R477-7-13.

(7) 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.

(8) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(9) An employee shall be eligible to return to work under 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) 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.

(10) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of R477-2-5(7).

#### **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 of medical leave, if warranted by a medical condition.

(a) The medical leave begins on the last day the employee worked. 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. 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.

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 after the last day worked, 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 ~~up to five years~~ health and life insurance as provided in 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 ~~cash payout~~ 401(k) contribution and the purchase of health and life insurance as provided in 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 is able to return to work within one year of the last day worked, 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 perform the essential functions of the position because of a permanent disability that qualifies as a disability under the ADA, the agency shall offer the employee a reassignment to one or more immediately available vacant positions, for which the employee qualifies, and whose essential functions the employee is able to perform without a reasonable accommodation.

(c) If an employee is unable to return to work within one year after the last day worked, the employee shall be separated from state employment.

(4) An employee who files a fraudulent long term disability claim shall be disciplined according to the provisions of R477-11.

**KEY: holidays, leave benefits, vacations**

**Date of Enactment or Last Substantive Amendment:** ~~July 2, 2005~~ 2006

**Authorizing, and Implemented or Interpreted Law:** 34-43-103; 49-9-203; 63-13-2; 67-19-6; 67-19-12.9; 67-19-14.5

## Human Resource Management, Administration **R477-8** Working Conditions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28682

FILED: 04/28/2006, 10:50

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Amendments to this rule adjust the state policy on the setting of the overtime year and the payout of compensatory hours to exempt employees.

**SUMMARY OF THE RULE OR CHANGE:** A subsection is deleted from Section R477-8-2 and reinserted in Section R477-7-7. Section R477-8-6 is amended to allow agencies to establish an overtime year by division rather than for the agency and provides that an overtime year can only be changed when the current overtime year has lapsed. The amendment also provides that compensatory time for a Fair Labor Standards Act (FLSA) exempt employee shall lapse at the end of the overtime year, when the employee transfers to another agency or terminates state employment. Other amendments are nonsubstantive changes to the use of terms in order to be consistent through out the Department of Human Resource Management (DHRM) rules.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 20A-3-103, 67-19-6, and 67-19-6.7

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** No cost savings will accrue to the state with this amendment even though a transferring or terminating employee will be required to lapse compensatory time. The state only pays for compensatory time if the employee has over 80 hours. Current policy requires that these be paid out regardless.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by 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 saving 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 affect on business. Jeff Herring, Executive Director

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HUMAN RESOURCE MANAGEMENT  
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Room 2120 STATE OFFICE BLDG  
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SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple or Linda Cooper at the above address, by phone at 801-538-3067 or 801-538-3208, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at [cwhipple@utah.gov](mailto:cwhipple@utah.gov) or [LKCOOPER@utah.gov](mailto:LKCOOPER@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Jeff Herring, Executive Director

## **R477. Human Resource Management, Administration.**

### **R477-8. Working Conditions.**

#### **R477-8-2. 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) The state's standard work week begins Saturday and ends the following Friday.

(b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of R477-8-6.

(c) An employee may negotiate for flexible starting and quitting times with the immediate supervisor as long as scheduling is consistent with overtime provisions of the rules R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

(f) An employee must work in increments of 15 minutes or more to receive ~~pay~~ salary for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked. ]

~~(g) An employee who satisfies the criteria in this subsection shall be granted up to two hours of administrative leave to vote in an official election.~~

~~(i) The employee must:~~

~~(A) have fewer than three total hours off the job between the time the polls open and close, and;~~

~~(B) apply for the time in the previous 24 hours.~~

~~(ii) Management may specify the hours when the employee may be absent.]~~

#### **R477-8-6. 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 Utah Code 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 office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31 and 67-19a-301 and Title 63, Chapter 46b shall not apply 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 shall not count as hours worked when calculating overtime accrual. Hours worked over two or more weeks shall 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. Except for Schedule AB, Schedule AD Deputy and Division Directors [~~and equivalents~~], and Schedule AQ, compensatory hours earned in excess of a base of 80 shall be paid down to 80.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by division and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or 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: [~~when an employee transfers to another agency, terminates, retires, or otherwise does not return to work before the end of the overtime year.~~]

- (i) at the end of the employee's established overtime year;
- (ii) when an employee transfers to another agency; or
- (iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(~~f~~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.

(~~f~~e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime shall not be compensated with actual payment. Schedule AB employees shall 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) An FLSA nonexempt employee must complete and sign a state approved biweekly time ~~[sheet]record~~. Time ~~[sheets]records~~ developed by the agency shall have the same elements of the state approved time ~~[sheet]record~~ and be approved by the Department of Administrative Services, Division of Finance.

(b) An FLSA exempt employee who works more than 80 hours in a work period must record the total hours worked and the compensatory time used on a biweekly time ~~[sheet]record~~. All hours must be recorded in order to claim overtime. Completion of the time ~~[sheet]record~~ is at agency discretion when no overtime is worked during the work period.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be subject to disciplinary action.

(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;
- (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 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. Carrying a beeper 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 time sheet 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.

(f) **Commuting and Travel Time:**

(i) Normal commuting time from home to work and back shall not count towards hours worked.

(ii) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(iii) 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.

(iv) 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.

(v) 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.

(g) **Excess Hours:** An employee may use excess hours the same way as annual leave.

(i) Agency management shall approve excess hours before the work is performed.

(ii) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(iii) An employee on schedule AB may not accumulate more than 80 excess hours.

(iv) Agency management may pay out excess hours under one of the following:

- (A) paid off automatically in the same pay period accrued;
- (B) all hours accrued above 80; or

(C) an employee on schedule AB shall only be paid for excess hours at separation.

**KEY: breaks, telecommuting, overtime, dual employment**

**Date of Enactment or Last Substantive Amendment:** ~~July 2, 2005~~ **2006**

**Notice of Continuation:** June 11, 2002

**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.: 28687

FILED: 04/28/2006, 10:55

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule will make an employee responsible for compliance with the federal Hatch Act when participating in covered political activity.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Section R477-9-4 require an employee who participates in political activity to comply with the federal Hatch Act and mandates that an agency shall terminate any employee who is in violation of the Act. Nonsubstantive amendments to Section R477-9-5 change the term "pay" to "salary" for consistency in the use of these terms throughout the Department of Human Resource Management (DHRM) rules.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 67-19-6 and 67-19-19

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** This rule will impact only a few state employees and will have no cost impact on agencies of the state.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by 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 saving 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 affect on business. Jeff Herring, Executive Director.

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ADMINISTRATION  
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SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Linda Cooper or Conroy Whipple at the above address, by phone at 801-538-3208 or 801-538-3067, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at LKCOOPER@utah.gov or cwhipple@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Jeff Herring, Executive Director

#### **R477. Human Resource Management, Administration.**

##### **R477-9. Employee Conduct.**

##### **R477-9-4. Political Activity.**

A state career service employee may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The employee shall comply with the provisions of the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508. The following rules apply to a career service employee in any salary range and position.

(1) 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 shall not receive annual leave while serving in a political office.

(2) 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.

(3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.

(4) 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.

(5) This rule shall not apply to an employee who is restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. ~~[To determine whether an employee shall adhere to the federal Hatch Act, an employee may contact DHRM or the employing agency's human resource office for guidelines.]~~ Agency management shall dismiss any employee whose employment is found to be in violation of the provisions of this law by the Merit Systems Protection Board.

~~(6) Violations of law governing political activity shall be reported in writing to the Executive Director, DHRM, who shall investigate the validity of any allegation and assess the extent to which any activity was knowingly and willfully conducted in violation of law.]~~

##### **R477-9-5. Employee Indebtedness to the State.**

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of pay/salary that exceeds the minimum federal wage withheld. Overtime pay/salary shall not be withheld.

(a) The following three conditions must be met before withholding of pay/salary may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the pay/salary.

(iii) An employee must be notified of this rule which allows the state to withhold pay/salary.

(b) An employee separating from state service will have pay/salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have pay/salary withheld from their last paycheck.

(d) The state may withhold an employee's pay/salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of pay/salary determined by evidence that an employee did not work the hours for which they received pay/salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of R477-9-4(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

**KEY: conflict of interest, government ethics, Hatch Act, personnel management**

**Date of Enactment or Last Substantive Amendment: ~~July 2, 2004~~2006**

**Notice of Continuation: June 11, 2002**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-19**

## Human Resource Management, Administration

### **R477-10**

## Employee Development

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28684

FILED: 04/28/2006, 10:52

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Amendments to this rule eliminate the highest level performer program, make substantial changes to the state policy on corrective action, and clarify what monies are reimbursed to an employee who participates in an agency educational assistance program.

**SUMMARY OF THE RULE OR CHANGE:** Amendments to Section R477-10-1 delete the option for an agency to establish a highest level performer program. Amendments to Section R477-10-2 are a significant change in state policy. Agencies will now be required to consult with the Department of Human Resource Management (DHRM) prior to imposing corrective action. A written plan will now be just one of several options for corrective action. Criteria are provided in rule that define an appropriate written plan. Other options for corrective action are deleted; referral for personal counseling, career counseling and outplacement, and a period of constant review. Agency management will also be required to notify an employee who successfully completes corrective action that discipline will be imposed if the employee reverts back to the behavior that resulted in the corrective action. Amendments to Section R477-10-5 clarify that an employee will not be reimbursed for educational expenses paid with scholarships, subsidies, or grants while participating in the state-sponsored education assistance program.

**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:** A small savings may accrue to the state because an employee will no longer be eligible for educational reimbursement for expenses paid with scholarships, subsidies or grants.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by 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 saving 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 affect on business. Jeff Herring, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

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 provisions of this rule consistent with 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 30 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 employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 30 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
3	Unsuccessful	0
	Exceptional	3
	Highly Successful	2.5
4	Successful	2
	Unsuccessful	0
	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Marginal	1
	Unsuccessful	0

~~(2) In addition to the above ratings, agency management may establish a rating category for highest level performers under the following conditions:~~

~~(a) Each employee who receives this rating shall receive a performance rating of 4.~~

~~(b) Agencies shall devise and publish the criteria they will use to select the highest level performers by August 30 of each year. Selection criteria for non-supervisory employees shall be comparable to the Utah Code 67-19c-101(3)(c). Selection criteria for supervisory or management employees shall be comparable to "The Manager of the Year Award."~~

~~(3)(2) Each state employee shall receive a performance evaluation effective on or before the beginning of the first pay period of each fiscal year.~~

(a) A probationary employee shall receive a performance evaluation at the end of the probationary period and again prior to the beginning of the first pay period of the fiscal year.

~~(4)(3) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.~~

(a) 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.

**R477-10-2. Corrective Action.**

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management [shall] may take appropriate, and documented[-, and clearly labeled] corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee ~~[to discover the reasons and to develop]~~ and determine[-an] appropriate[-written] corrective action[-plan]. [The]If a written corrective action plan is developed or a written warning issued, the employee shall sign the ~~[-written corrective action] plan or the warning~~ to certify that it has been reviewed. Refusal to sign the corrective action plan or warning shall constitute insubordination subject to discipline.~~[-An employee shall have the right to submit written comment to accompany the corrective action plan.]~~

(2) An employee shall have the right to submit written comment to accompany the corrective action plan.

~~(a)~~ (3) Corrective actions shall include one or more of the following:

(a) a written plan to include the following elements:

(i) a designated period of time for improvement;

(ii) performance expectations;

(iii) closer supervision to include regular feedback of the employee's progress;

(iv) disciplinary action for failure to improve; and,

(v) written performance evaluation at the conclusion of the corrective action plan.

~~(i)~~ (b) closer supervision;

~~(ii)~~ (c) training;[

~~(iii) referral for personal counseling by an agency head's approved designee;]~~

~~(iv)~~ (d) reassignment;

~~(v)~~ (e) use of appropriate leave;[

~~(vi) career counseling and outplacement;~~

~~(vii) period of constant review;]~~

~~(viii)~~ (f) opportunity for remediation;

~~(ix)~~ (g) written warnings.

~~(2) The supervisor shall designate an appropriate corrective action period and shall provide periodic evaluation of the employee's progress.~~

~~(3) At the conclusion of corrective action, a formal performance evaluation shall be written and documented in the personnel record.~~

~~(4) When the corrective action plan is completed and the employee has not demonstrated improved performance that is satisfactory, the employee shall be disciplined according to R477-11. The written record of the corrective action shall satisfy the requirement of Section 67-19-18(1).]~~ (4) Following successful completion of corrective action, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

~~(5) DHRM shall provide assistance to agency management upon request.]~~

**R477-10-5. Education Assistance.**

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee resigns from state employment within 12 months of completing educational work.

(d) Education assistance shall not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.

(e) The employee shall disclose all ~~[sources of funding being received]~~ scholarships, subsidies and grant monies provided to the employee for the educational program.

(i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from ~~[other]~~ sources in R477-10-5(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

(3) Agencies may offer educational assistance to law enforcement and correctional officers consistent with section 67-19-12.2 and with these criteria:

(a) The program shall comply with R477-10-5(1) and R477-10-5(2).

(b) The program shall be published and available to all qualified employees. To qualify:

(i) The employee's job duties shall satisfy the conditions of subsection 67-19-12.2 (1).

(ii) The employee shall have completed probation.

(iii) The employee shall maintain a grade point average of at least 3.0 or equivalent from an accredited college or university.

(c) The program may provide additional compensation for an employee who completes a higher degree on or after April 30, 2001, in a subject area directly related to the employee's duties. If this policy is adopted, then:

(i) Two steps shall be given for an associate's degree.

(ii) Two steps shall be given for a bachelor's degree.

(iii) Two steps shall be given for a master's degree.

**KEY:** educational tuition, employee performance evaluations, employee productivity, training programs

**Date of Enactment or Last Substantive Amendment:** ~~July 2, 2005~~ 2006

**Notice of Continuation:** June 11, 2002

**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.: 28683

FILED: 04/28/2006, 10:51

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Amendments to this rule change the state policy on discipline and add clarifying language for leave with pay status.

**SUMMARY OF THE RULE OR CHANGE:** Section R477-11-1 is amended to add noncompliance with standards of conduct as a reason for which an employee may be disciplined and stipulate that an employee who is demoted shall receive a reduction in the current actual wage. The mandatory reduction in current actual wage is required by H.B. 269 which passed in the 2006 General Session. Other changes are nonsubstantive amendments in the use of the terms "salary", "pay", and "current actual wage" in order to be consistent in their usage throughout the Department of Human Resource Management (DHRM) rules. One amendment to Section R477-11-2 clarifies that an employee may be placed on paid administrative leave rather than suspended with pay when an appeal is pending. This terminology is more consistent with definitions used in the DHRM rules. (DAR NOTE: H.B. 269 is found at Chapter 139, Laws of Utah 2006, and will be effective 07/01/2006.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63, Chapter 2; and Sections 67-19-1 and 67-19-18

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** Policy changes in this rule will be handled through existing administrative procedures and will not impose any additional administrative or cost burden on agencies.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by 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 saving 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 affect 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:**

Conroy Whipple or Linda Cooper at the above address, by phone at 801-538-3067 or 801-538-3208, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at [cwhipple@utah.gov](mailto:cwhipple@utah.gov) or [LKCOOPER@utah.gov](mailto:LKCOOPER@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

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:

(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 ~~may~~ shall receive a reduction in ~~pay~~ the current actual wage.

(ii) A demotion within the employee's current ~~pay~~ salary range may be accomplished by lowering the employee's ~~salary rate back on the range~~ current actual wage, 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 the provisions of Subsection 67-19-18(5) and 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, as provided by 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 ~~rate of pay~~ 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 as provided 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 as explained under R477-10-2 and 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 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 department 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 Chapter 63-2, the Governmental Access and Records Management Act.

(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 [~~suspend an employee with pay~~] place an employee on paid administrative leave pending the administrative appeal to the agency head.

**KEY: discipline of employees, dismissal of employees, grievances, government hearings**

**Date of Enactment or Last Substantive Amendment:** ~~July 2, 2005~~ **2006**

**Notice of Continuation:** June 11, 2002

**Authorizing, and Implemented or Interpreted Law:** 67-19-6; 67-19-18; 63-2

◆ ————— ◆

**Human Resource Management,  
Administration  
R477-12  
Separations**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28685

FILED: 04/28/2006, 10:53

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Amendments to this rule add clarity to the state policy on voluntary terminations from state employment and the employee right to rescind the termination. This is at the request of agencies. The amendments also implement a change to Section 67-19-3 required by the passage of H.B. 269 in the 2006 General Session. (DAR NOTE: H.B. 269 (2006) is found at Chapter 139, Laws of Utah 2006, and will be effective 07/01/2006.)

**SUMMARY OF THE RULE OR CHANGE:** Amendments to Section R477-12-1 clarify that a notice of retirement is a resignation that may be rescinded within 24 hours by the employee. Amendments to Section R477-12-3 implement the new definition of temporary employee placed in Section 67-19-3 by the passage of H.B. 269 (2006). This is an important fine tuning of the reduction in force process that will prevent the termination of all new schedule AT employees in the new Department of Technology Services if there is ever a reduction in force in that agency.

**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:** The amendments to this rule simply clarify due process and will have no impact on agency budgets.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

**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 saving 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 affect 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:**

Conroy Whipple or Linda Cooper at the above address, by phone at 801-538-3067 or 801-538-3208, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at [cwhipple@utah.gov](mailto:cwhipple@utah.gov) or [LKCOOPER@utah.gov](mailto:LKCOOPER@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 06/14/2006.**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006**

**AUTHORIZED BY: Jeff Herring, Executive Director**

**R477. Human Resource Management, Administration.****R477-12. Separations.****R477-12-1. Resignation.**

A career service employee may resign or retire by giving written or verbal notice to the immediate supervisor or an appropriate representative of management in the work unit.

(1) Agency management may accept an employee's notice of resignation or retirement without prejudice when ~~the resignation is~~ received at least ten working days before its effective date.

(2) After submitting a notice of resignation or retirement, an employee may withdraw it on the next working day by notifying the immediate supervisor or an appropriate representative of management in the work unit.[]

~~— (a) After the close of the next working day following submission, withdrawal of a resignation may occur only with the consent of agency management.]~~

(b) If the ~~resignation~~ withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.

(b) After the close of the next working day following submission, withdrawal of a resignation or retirement may occur only with the consent of agency management.

**R477-12-3. Reduction in Force.**

Reductions in force shall be required when there are inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:

(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 and approved by the Executive Director, DHRM, or designee. The following items shall be considered in developing the work force adjustment plan:

(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, relocation, and movement to vacant positions for which the employee qualifies;

(d) 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 for a hearing with the agency head may be RIF'd.

(b) An employee covered by USERRA and in a leave without pay status must be identified, assigned retention points, and notified of the RIF of the previous position in the same manner as a career service employee.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency or department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) An employee within a category of work, including employees covered under USERRA in a leave without pay status, shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in R477-10-1(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for an employee covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) ~~career service exempt employees~~ temporary employees;

(b) probationary employees;

(c) career service employees with the lowest retention points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) An employee, including one covered under USERRA in a leave without pay status, who is separated due to a reduction in force 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) Appeals.

(a) An employee notified of separation due to a reduction in force may appeal to the agency head for an administrative review by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(b) 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 the last career service position held, for a period of one year following the date of separation. R477-4-4 applies for selection of individuals from the reappointment register.

(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF'd individual meets the job requirements for position vacancies.

(ii) A RIF'd individual shall remain on the state reappointment register for 12 months from the date of separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's 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) At agency discretion, an individual reappointed from a reappointment register 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 as provided for by these rules, shall be placed on the reappointment register.

(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 ~~pay~~ salary range comparable to the individual's last position in the career service, provided an opening exists; or

(ii) be appointed to any lesser career service position for which the individual qualifies, pending the opening of a position at the last career service salary range held.

(b) The Executive Director, 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.

(d) In lieu of placement on the reappointment register, management may place an employee in a vacant career service position consistent with R477-12-3(7)(c) for which he qualifies. A memorandum of understanding waiving all appeal rights concerning the reassignment shall be signed by the employee.

**KEY: administrative procedures, employees' rights, grievances, retirement**

**Date of Enactment or Last Substantive Amendment:** ~~July 2, 2005~~ 2006

**Notice of Continuation:** June 11, 2002

**Authorizing, and Implemented or Interpreted Law:** 67-19-6; ~~69~~ 67-19-17; ~~69~~ 67-19-18



## Human Resource Management, Administration **R477-14** Substance Abuse and Drug-Free Workplace

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 28686  
FILED: 04/28/2006, 10:54

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This will amend the state policy on the options available to an agency when an employee has a positive confirmation test for a controlled substance. The intent is to speed up due process when dealing with these employees.

**SUMMARY OF THE RULE OR CHANGE:** The amendment to Section R477-14-1 will eliminate the option for agencies to place an employee on corrective action when there is a positive confirmation test for a controlled substance. The only option available to agencies will be discipline or no action.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 67-19-6, 67-19-18, 67-19-34, 67-19-37, and 67-19-38

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This change in policy will impact just a few employees and will have no impact on an agencies budget.

❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments. 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.

❖ **OTHER PERSONS:** This rule only affects the executive branch of state government and will have no impact on other persons. 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.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only affects agencies of the executive branch of 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.

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 saving 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 affect 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:

Linda Cooper or Conroy Whipple at the above address, by phone at 801-538-3208 or 801-538-3067, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at LKCOOPER@utah.gov or cwhipple@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

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 Transportation 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 effect 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 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 safety 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;
- (e) follow up.

(7) For employees in non safety 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 safety 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) Employees who hold safety sensitive positions, are final candidates for, are transferred to, or are assigned the duties of a safety sensitive position, and final applicants for safety 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;
- (e) follow up;
- (f) preemployment;
- (g) random.

(10) For employees in safety 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) Employees in safety sensitive positions, as approved 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 safety sensitive positions shall be conducted at the discretion of the employing agency.

(12) Employees in safety sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing safety sensitive functions, must be removed from performing safety sensitive duties for 8 hours, or until another test is administered and the result is less than .02.

(13) Employees in safety sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing safety sensitive duties, may be 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 ~~corrective or~~ 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.

(16) The agency's human resource 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.

**KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees**

**Date of Enactment or Last Substantive Amendment: ~~July 1, 2003~~ 2006**

**Notice of Continuation: December 11, 2001**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; 63-19-37; 67-19-38**

◆ ————— ◆

## Human Services, Child and Family Services

# R512-305

## Out of Home Services, Independent Living Services

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28662

FILED: 04/21/2006, 13:48

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division needs to change the wording "Independent Living" to "Transition to Adult Living" and make minor changes to the rule to better reflect the Transition to Adult Living Services program.

**SUMMARY OF THE RULE OR CHANGE:** The Division will change the rule from Independent Living Services to Transition to Adult Living Services to better accommodate youth who are enrolled in the Transition to Adult Living Services.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-4a-105

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The Finance Director for the Division reviewed possible anticipated costs or savings to the state budget due to this rule amendment. It was determined that

this rule amendment will not increase costs or savings to the Division because this is a change in wording only. Services will be provided within the current budget.

❖ **LOCAL GOVERNMENTS:** After a careful review of possible impact of costs or savings on local government by the Finance Director for the Division, it was determined that there will be no increased costs or savings due to this rule amendment because this is a wording change only.

❖ **OTHER PERSONS:** The Finance Director for the Division reviewed possible anticipated costs or savings to other persons due to this rule amendment. It was determined that the families affected by this rule amendment will not see an increase in costs or savings because this is a wording change only.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** After careful review by the Division's Finance Director of possible compliance costs for affected persons, it was determined that there will be no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no impact on businesses. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
Room 225  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Carol Miller or Adam F Trupp at the above address, by phone at 801-538-4451 or 801-538-4462, by FAX at 801-538-3993 or 801-538-4016, or by Internet E-mail at CAROLMILLER@utah.gov or AFTRUPP@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Richard Anderson, Director

**R512. Human Services, Child and Family Services.**  
**R512-305. Out of Home Services, ~~Independent Living~~ Transition to Adult Living Services.**

**R512-305-1. Purpose and Authority.**

A. The purpose of ~~independent living~~ Transition to Adult Living (TAL) services is to help prepare a youth who is receiving out of home services in accordance with R512-300 to transition to self-sufficiency in adulthood and to provide support to youth upon leaving agency custody. TAL is a continuum of services that begins while youth are in care and continues through post-discharge with the Young Adult Resource Network (YARN).

B. ~~[Independent living]~~TAL services, which includes the Education and Training Voucher Program, are authorized by the John H. Chafee Foster Care Independence Program, 42 USC 677 (1999), incorporated by reference.

#### **R512-305-2. Scope of Services.**

~~[A. Qualification for and Duration of Services. Independent living services are offered to all youth age 14 or older who are receiving out of home services, regardless of permanency goal as specified in R512-300-4.D, or who formerly received out of home services. Services are:~~

~~1. Optional for a youth receiving out of home services who is age 14 or 15, when the Child and Family Team determines that services are appropriate;~~

~~2. Required for a youth receiving out of home services who is age 16 or older until agency custody is terminated;~~

~~3. Optional for a youth who attained age 18 while in agency custody, but who is no longer in agency custody, and may continue until the last day of the month in which the youth attains age 21, in accordance with R512-305-5.~~

~~B. Service Description. Independent living services consist of a variety of personalized strategies and resources that assist a youth to prepare for adult living, such as strength and needs assessment, planning, educational and employment guidance, basic skills training, personal and emotional support, and independent living placement.~~

~~C. Availability. Independent living services are available in all geographic regions of the state.]A. Qualification for and duration of services:~~

~~1. TAL services are required for all youth receiving out of home services, age 14 or older, until agency custody is terminated regardless of permanency goal, as specified in R512-300-4.D.~~

~~2. The YARN provides services for youth if they are no longer in care and are not yet 21, and the youth:~~

~~a. Ages out of foster care, or~~

~~b. While in foster care, after the age of 14, the youth received at least 12 consecutive months of TAL services and the court terminated reunification.~~

~~B. Service description:~~

~~1. TAL services build on the youth's individual strengths and develop personal assets in order to help young people acquire the motivation and the means to be successful throughout their lives. The strategies are aimed at helping foster youth achieve five fundamental aspects of adult life, including safe and affordable housing, educational attainment and stable employment, health care access, positive sense of self, and supportive and enduring relationships.~~

~~2. YARN consists of time-limited support to youth. This assistance can be provided through support, financial aid, or Basic Life Skills Classes and may include housing, counseling, employment education, and other appropriate support and services to complement a youth's efforts to achieve self-sufficiency.~~

~~C. Availability:~~

~~1. TAL services and YARN are available in all geographic regions of the state.~~

~~2. TAL services and YARN are available on the same basis to Indian youth who are or were formerly in Tribal custody within the boundaries of the state.~~

#### **R512-305-3. ~~[Independent Living]~~Transition to Adult Living Services for a Youth in Agency Custody.**

~~[A. The Child and Family Team determines the independent living plan, with a youth age 16 or older taking the lead and setting goals:~~

~~B. The caseworker, with the assistance of the youth and Child and Family Team, completes an assessment to identify the strengths and needs of the youth.~~

~~C. Based upon the assessment, a plan is developed that identifies the youth's strengths and specific services and needs.~~

~~D. The plan includes a continuum of training and services to be completed by the youth in such settings as the foster home, with a therapist, at school, or through other community-based resources and programs.~~

~~E. Basic Living Skills training shall be offered to each youth who attains age 16. The training shall include human hygiene and sexuality and a basic knowledge of community resources. Other topics included in basic living skills training may include:~~

~~1. Communication, socialization and relationships~~

~~2. Job seeking information, assistance and maintenance skills~~

~~3. Money management~~

~~4. Housing~~

~~5. Food preparation and planning~~

~~6. Legal rights and responsibilities~~

~~7. Health care and counseling~~

~~8. Substance abuse~~

~~9. Decision making~~

~~10. Educational planning~~

~~11. Housekeeping~~

~~12. Transportation~~

~~F. Each youth who completes basic living skills training is entitled to receive a completion payment.]A. The caseworker, with the assistance of the youth and Child and Family Team, ensure completion of the empirically validated life skills assessment to identify the strengths and needs of the youth.~~

~~B. Based upon the empirically validated life skills assessment, a plan is developed that identifies the youth's strengths, needs, and specific services.~~

~~C. The Child and Family Team determines the TAL plan. Youth aged 14 or older are required to have a TAL plan, with youth 16 or older taking the lead in setting goals and facilitating the Child and Family Team with staff guidance.~~

~~D. The TAL plan includes a continuum of training and services to be completed by the youth, and designated team members, in such settings as the foster home, with a therapist, at school, or through other community-based resources and programs.~~

~~E. Basic Living Skills training shall be offered to each youth who attains age 16. The training may include training in daily living skills, budgeting, career development and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention).~~

~~F. Each youth who completes Basic Living Skills training may receive a completion payment.~~

**R512-305-4. ~~[Independent]~~Transition to Adult Living Placement for a Youth in Agency Custody.**

~~A TAL placement may be used as an alternative to out of home care when it is determined that such a placement is in the best interest of the youth. The appropriate types of living arrangements for youth in this situation include living with kin; living with former out of home caregivers while paying rent; living in the community with roommates of the same sex; living alone; living in a group facility, YWCA, boarding house, or dorm; living with an adult who has passed a background check or the placement was assessed and approved by the regional director or designee. This recommendation will be presented to the Child and Family Team, who will work to ensure that this type of placement is appropriate and that the following practice guidelines are met:~~

- ~~A. [An independent living]A TAL placement may be used as an out-of-home care placement.~~
- ~~B. A youth must be at least 16 years of age to be in [an independent living]a TAL placement.~~
- ~~C. The Child and Family Team is responsible to determine if a recommendation for [an independent living]a TAL placement for a youth is appropriate.~~
- ~~D. The regional director or designee is authorized to approve [an independent living]a TAL placement.~~
- ~~E. The worker and youth shall complete a contract outlining responsibilities and expectations while in the placement.~~
- ~~F. The worker shall visit with and monitor progress of the youth at an interval determined by the Child and Family Team, but no less frequently than once per month.~~
- ~~G. The youth may receive [an independent living]a TAL stipend while in the [independent living]TAL placement.~~
- ~~H. If the [independent living]TAL placement is not successful, the Child and Family Team shall meet to determine, with the youth, a more appropriate living arrangement in accordance with R512-305-4.E.~~

**R512-305-5. Division Responsibility to a Youth Leaving Out of Home Services~~[at Age 18 or Older]~~.**

~~A. [A youth who attained age 18 while in state custody, but who is no longer in state custody, may request independent living services from the Division until the last day of the month in which the youth attains age 21.]The YARN provides support to youth who leave out of home care, as specified in R512-305-2.~~

~~B. A youth may access services by contacting a Division office and being referred to a regional [independent living]TAL coordinator.~~

~~C. [If services will stabilize the youth's living situation and no other reasonable alternative exists to meet the needs, independent living services will be provided.~~

~~—D.—]Services may include additional basic life skills training, information and referral, mentoring, computer access for resources, including word processing, employment and educational counseling, information and referral, and follow-up support[, and assistance with costs of room and board, subject to the limits of available Division funding designated for this purpose]. Funds may also assist eligible youth in the four areas listed below:~~

- ~~1. Education, Training, and Career Exploration.~~
- ~~2. Physical, Mental Health and Emotional Support.~~
- ~~3. Transportation.~~
- ~~4. Housing Support.~~

~~[E]D. Funds used for room and board are subject to federal limits.[Room and board includes rent, utilities, food, clothing, transportation costs, personal care items and other expenses related to daily living. Room and board does not include medical care, dental~~

~~care, mental health care, tuition payments, or the purchase of automobiles.~~

~~F. The amount that a youth may receive for room and board is \$500 per month, with a maximum of \$2,000 per year.~~

~~G. Independent living services are available on the same basis to Indian youth who were formerly in tribal custody within the boundaries of the State, and whose tribal custody was terminated at age 18 or older, as they are for youth who received out of home services from the Division until age 18 or older.]~~

**KEY: social services, child welfare, foster care, Transition to Adult Living**

**Date of Enactment or Last Substantive Amendment:**  
**[September 3, 2003]2006**

**Authorizing, Implemented, or Interpreted Law: 62A-4a-105**



## Human Services, Child and Family Services

### R512-306

## Independent Living Services, Education and Training Voucher Program

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28663

FILED: 04/21/2006, 13:55

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division needs to change the wording "Independent Living" to "Transition to Adult Living" and make minor changes to the rule to better reflect the Transition to Adult Living Services, Education and Training Voucher Program.

**SUMMARY OF THE RULE OR CHANGE:** The Division will change the rule from "Independent Living Services" to "Transition to Adult Living Services" to better accommodate youth who are enrolled in the Transition to Adult Living Services and to clarify the use of the Education and Training Voucher Program.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-4a-105

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The Finance Director for the Division reviewed possible anticipated costs or savings to the state budget due to this rule amendment. It was determined that this rule amendment will not increase costs or savings to the Division because this is a change in wording only. Services will be provided within the current budget.

❖ **LOCAL GOVERNMENTS:** After a careful review of possible impact of costs or savings on local government by the Division's Finance Director, it was determined that there will be no increased costs or savings due to this rule amendment because this is a wording change only.

❖ OTHER PERSONS: The Finance Director for the Division reviewed possible anticipated costs or savings to other persons due to this rule amendment. It was determined that the families affected by this rule amendment will not see an increase in costs or savings because this is a wording change only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: After careful review by the Division's Finance Director of possible compliance costs for affected persons, it was determined that there will be no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
Room 225  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Miller or Adam F Trupp at the above address, by phone at 801-538-4451 or 801-538-4462, by FAX at 801-538-3993 or 801-538-4016, or by Internet E-mail at CAROLMILLER@utah.gov or AFTRUPP@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Richard Anderson, Director

## **R512. Human Services, Child and Family Services.**

### **R512-306. ~~Independent~~ Transition to Adult Living Services, Education and Training Voucher Program.**

#### **R512-306-1. Purpose and Authority.**

1) The Education and Training Voucher Program [~~ETV~~] assists individuals in foster care to make a more successful transition to self-sufficiency in adulthood. The Education and Training Voucher p[ro]gram provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

2) The Education and Training Voucher Program is authorized by Pub. L. No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (2001) are also incorporated by reference.

#### **R512-306-2. Definitions.**

1) The following terms are defined for the purposes of this rule:  
a) Institution of higher education means a school that:  
i. Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or

ii. Provides not less than one year of training towards gainful employment, or

iii. Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

A. Admits as regular students only persons with a high school diploma or equivalent; or who are beyond the age of compulsory school attendance (Section 53A-11-101 and 53A-11-102).

B. Public or non-profit facility; and

C. Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

c) GED means General Education Development.

d) Division means Division of Child and Family Services.

e) Foster care means substitute care for children in the custody of the Department of Human Services/Division of Child and Family Services and provided by families licensed by the Department of Human Services, Office of Licensing and/or Indian Tribes.

f) Full-time means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

g) Part-time means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

#### **R512-306-3. Scope of Program.**

1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

a) An individual in foster care who has not yet reached 21 years of age, or

b) An individual no longer in foster care, but who received 12 months of Transition to Adult Living services after the age of 14 while in foster care and the court terminated reunification, or

[b]c) An individual no longer in foster care who reached 18 years of age while in foster care and who has not yet reached 21 years of age, or

[e]d) An individual adopted from foster care after reaching 16 years of age and who has not yet attained 21 years of age, and;

—d) Have graduated from high school or earned a GED;

e) [Have]Has an individual educational assessment and individual education plan completed by [DCFS]the Division or their designee;

f) Submit a completed application for the Education and Training Voucher Program;

g) Be accepted to a qualified college, university, or vocational program;

h) Apply for and accept available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

i) Enroll as a full-time or part-time student in the college, university or vocational program; and

j) Maintain a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

2) The application and attachments will be reviewed and approved by regional [~~independent living~~]Transition to Adult Living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when [ETV]Education and Training Voucher Program funding is available. If demand exceeds available funding, the Division may establish a waiting list, which will then be awarded to the applicants in the order received on a first come

first serve basis for funding or the Division may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided.

3) If an application for benefits under the Education and Training Voucher[s] program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section as per 63-46b-3 et seq.

4) The individual may participate in the Education~~Employment~~ and Training Voucher Program until the completion of:

- a) the degree or vocational program; or
- b) reach age 21.

~~(i)c~~ If ~~you~~ an individual attains age ~~reach~~ 21 while enrolled in the ~~[ETV]Education and Training Voucher Program~~ program on the date age 21 is attained, the individual may continue in the program until age 23 as long as the individual is attending an accredited or pre-accredited college, university, or vocational program full-time or part-time, is making satisfactory progress, and funding continues to be available. The individual must make a written request and receive a written approval prior to his or her 21st birthday to be continued for eligibility for the ~~[ETV program]~~Education and Training Voucher Program.

5) The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to the Division in order to continue receiving benefits under the program.

6) A program participant ~~[will receive written notice that they are on probationary status if the following condition applies:]~~ who receives less than a 2.0 GPA in a single grading period will be placed on probationary status and

a) ~~[An individual that receives less than a 2.0 GPA in a single grading period]~~ The individual will receive written notice ~~[that they are on]~~ of probationary status. The individual will have one subsequent grading period to regain or show significant progress toward ~~[at least]~~ a 2.0 GPA to continue in the program.

b) Upon completion of a satisfactory grading period, the participant[s] will be notified that the probation period is over.

c) The [P] participant[s] that does not receive satisfactory grades while on probation will receive written notice ~~[that they are no longer eligible for]~~ of loss of eligibility for the [ETV program] Education and Training Voucher Program.

7) An individual under age 21 who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress ~~[or not attending full time]~~ may reapply for the program at any time.

8) An individual may receive vouchers up to a maximum amount of \$5,000 per year through the Education and Training Voucher Program. Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus:

- i) expected contributions from the individual's family; and
- ii) estimated financial assistance from other State or Federal grants or programs.

b) Awards are subject to the availability of Division ~~[ETV]~~Education and Training Voucher Program funds appropriated for this program.

c) In accordance with 42 USC 677(i)(5), the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining an individual's eligibility for, or amount of, any other Federal or Federally supported assistance.

~~[R512-306-4. Cost of Attendance.~~

~~1) The cost of attendance, is authorized in 20 USC 1087H.~~

**[KEY: foster care, Transition to Adult Living**~~independent living~~**]  
Date of Enactment or Last Substantive Amendment: [August 3, 2005]2006**

**Authorizing, Implemented, or Interpreted Law: 62A-4a-105**



## Insurance, Administration R590-178 Securities Custody

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28696

FILED: 05/01/2006, 10:45

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule needs to be updated to conform with conditions and procedures in holding and transferring of securities, with the changes made in H.B. 33, passed during the 2006 General Session, and to conform more closely with the National Association of Insurance Commissioners Model Securities regulation. (DAR NOTE: H.B. 33 (2006) is found at Chapter 176, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: The changes to this rule allow broker/dealers to also function as custodians of insurance company assets.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-206, and 31A-4-108

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule will create no change to the work of the department. The number of filings made with the department will not change. Department revenues will not change.

❖ LOCAL GOVERNMENTS: This rule will not affect local governments since it deals solely with the relationship of the department and its licensees.

❖ OTHER PERSONS: The changes to this rule allow broker/dealers to also function as custodians of insurance company assets, which will allow broker/dealers to compete against state and national banks and trust companies who previously were the only ones who could act as custodians. This will expand the marketplace for securities custodians, give insurers more choice of who to put their securities with, may increase business for some broker/dealers and may reduce custody business of some banks and trust companies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes to this rule allow broker/dealers to also function as custodians of insurance company assets, which will allow broker/dealers to compete against state and national banks and trust companies who previously were the only ones who could act as custodians. This will expand the marketplace for securities custodians, give insurers more choice of who to put their securities with, may increase business for some broker/dealers and may reduce custody business of some banks and trust companies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Whereas broker/dealers are now able to function as custodians of insurance company assets they will be able to compete against state and national banks and trust companies who previously were the only ones who could act as custodians. 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](mailto: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 06/14/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/06/2006 at 9:00 AM, State Office Building (behind the Capitol), Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2006

AUTHORIZED BY: Jilene Whitby, Information Specialist

## **R590. Insurance, Administration.**

### **R590-178. Securities Custody.**

#### **R590-178-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Utah Insurance Code Sections 31A-2-201, 31A-2-206, and 31A-4-108.

#### **R590-178-2. Purpose and Scope.**

~~The purpose of this rule is to authorize domestic insurance companies [insurers] to utilize modern systems for holding and transferring securities without physical delivery of securities certificates. This rule establishes standards for national banks, state banks, trust companies and broker/dealers to qualify and operate as custodians for insurance company securities. [This rule applies to all Utah domestic insurers.]~~

### **R590-178-3. Definitions.**

As used in this rule:

~~[A. "Adequately Capitalized" means the capital threshold level determined by the standards adopted by United States banking regulators.~~

~~—[A][B]. "Agent" means a national bank, state bank, [or] trust company or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation. [or the Federal Reserve book entry system.]~~

~~[C]. "Clearing [C]corporation" means a corporation, as defined in Subsection 70A-8-101(1)[(e)], that is organized for the purpose of effecting transactions in securities by computerized book-entry. Clearing corporation also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C. Section 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.~~

~~[D]. "Custodian" means:~~

~~1. a national bank, [or] state bank, or trust company that shall at all times during which it acts as a custodian pursuant to this rule, be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below; or~~

~~2. a trust company [that is, at all times during which it acts as custodian, no less than adequately capitalized or a trust company] with minimum net worth of \$1,500,000 at all times during which it acts as a custodian, is [Custodians shall be] licensed by the United States or any state thereof, [and] as a trust company, and is in compliance with the regulatory authority as verified through regular examination by the regulatory authority [shall be regularly examined by the licensing authority]; or~~

~~3. A broker/dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars (\$250,000,000).~~

~~D. "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Equity Securities System (TRADES) or Treasury Direct systems.~~

~~[E. "Federal Reserve book entry system" means the computerized systems sponsored by the United States Department of the Treasury and other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities.] E. "Security" has the same meaning as that defined in 70A-8-101(1).~~

~~F. "Securities' certificate" has the same meaning as that defined in 70A-8-101(1).~~

~~G. "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent Annual or Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (S.E.C. Form 10-K) filed with the Securities and Exchange Commission.~~

~~H. "Treasury/Reserve Automated Debt Entry Securities System" (TRADES) and "Treasury Direct" mean the book entry securities systems established pursuant to 31 U.S.C. Section 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and Treasury Direct are subject to 31 C.F.R. pt. 357 et seq.~~

**R590-178-4. [Rule]Use of Book-Entry Systems.**

A domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any custodian through which an insurance company holds securities in a clearing corporation shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities.

**R590-178-5. Requirements for Custodial Agreements.**

A. An insurance company[insurer] may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or be held in a clearing corporation [or the Federal Reserve book entry system]. Securities so held are referred to in this rule as "[Custodial]Custodied Securities."

B. Agreements shall be in writing and shall be authorized by a resolution of the Board of Directors of the [insurer]insurance company or of an [by a committee] authorized committee of the board pursuant to 31A-5-412. The terms of the agreement shall comply with the following:

1. [Certificated securities]Securities' certificates held by the custodian shall be held separate from the securities' certificates of the custodian and of all of its other customers, [or in a fungible bulk of securities as part of a Filing of Securities by Issue arrangement.]

2. Securities held [in fungible bulk]indirectly by the custodian and securities in a clearing corporation [or in the Federal Reserve book entry system] shall be separately identified on the custodian's [books and]official records as being owned by the [insurer]insurance company. The records shall identify which [eustodial]custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation [or in the Federal Reserve book entry system]. If the securities are in a clearing corporation [or in the Federal Reserve book entry system], the records shall also identify [the location of]where the securities are~~[;]~~ and if in a clearing corporation, the name of the clearing corporation~~[;]~~ and if through an agent, the name of the agent.

3. All [eustodial]custodied securities [that are registered] shall be registered in the name of the [insurer]company or in the name of a nominee of the [insurer]company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

4. [Custodial]Custodied securities shall be held subject to the instructions of the insurance[insurer]company and shall be withdrawable upon the demand of the insurance company, except that [eustodial]custodied securities used to meet the deposit requirements set forth in Subsection 31A-2-206(2) shall, to the extent required by Subsection 31A-2-206(2), be under the control of the[subject to the] Insurance Commissioner[']s exclusive direction until control is released by the commissioner] and shall not be

withdrawn by the insurance[insurer] company without the prior written approval of the Insurance Commissioner.

5. The custodian shall be required to send~~[;]~~ or cause to be sent~~[;]~~ to the insurance[insurer] company a confirmation~~[s]~~ of all transfers of [eustodial]custodied securities to or from the account of the insurance[insurer] company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with[and] reports of holdings of [eustodial]custodied securities at [such-]times and containing [such-]information [as may be]reasonably requested by the insurance[insurer] company. The custodian's trust committee's annual report of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.

6. During the course of the custodian's regular business hours, an officer or employee of the insurance[insurer] company, an independent accountant selected by the insurance[insurer] company[;] or a representative of the Insurance Department shall be entitled to examine, on the premises of the custodian, the custodian's records relating to [eustodial]custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance[insurer] company.

7. Upon written request from the [insurer]insurance company, the custodian and its agents shall be required to send to the insurance[insurer] company:

(a) all reports they receive from a clearing corporation on their respective systems of[a copy of the most recent available information on the] internal accounting control[s] of the clearing corporation or the Federal Reserve system[;], and

(b) reports prepared by[a copy of the most recent available] outside auditors [report that addresses]on the custodian's or its agent's internal accounting control of [eustodial]custodied securities that the insurance company may reasonably request.

8. The [insurer shall identify and require the-]custodian [to]shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company[meet the insurer's regulatory reporting requirements].

9. The custodian shall provide, upon written request from an appropriate officer of the insurance[insurer] company, the appropriate affidavits with respect to [eustodial]custodied securities. These shall be substantially in the form of Custodian Affidavits, Form A, 298-6, Form B, 298-7, and Form C, 298-8, published by NAIC Model Regulation Service.

a. "Form A" is to be used by a custodian [bank or trust company-]where securities entrusted to its care have not been repositied elsewhere;

b. "Form B" is to be used in instances where a custodian [bank or trust company]corporation maintains securities on deposit with The Depository Trust Company or like entity; and

c. "Form C" is to be used where ownership is evidenced by book entry at a Federal Reserve Bank.

10. A national bank, state bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator or other regulator of a trust company. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided

by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

~~[+0]~~11. The custodian shall be obligated to indemnify the ~~insurance[insurer]~~ company for any loss of ~~[custodial]~~custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, and for burglary, robbery, holdup, theft and mysterious disappearance, including loss by damage or destruction.

12. In the event that there is loss of ~~[indemnified]~~ ~~custodial]~~custodied securities, for which the custodian shall be obligated to indemnify the insurance company as provided in paragraph (11) above, the custodian shall promptly replace the securities or the ~~[#]~~ fair ~~[market-]~~value thereof and the value of any loss of rights or privileges resulting from the loss of securities.

~~[+1]~~13. The agreement may provide that the custodian will not be liable for failure to take an action required under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war, whether declared or not and including existing wars, revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders, ~~[or]~~ other acts of any governmental authority, or any other cause beyond its reasonable control.

~~[+2]~~14. In the event that the custodian gains entry in a clearing corporation ~~[or in the Federal Reserve book entry system]~~ through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to ~~the same~~ ~~[provisions of]~~ liability for loss of ~~[custodial]~~custodied securities ~~as~~ ~~[substantially similar to the liability provisions applicable to]~~ the custodian. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction of the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.

15. The custodian shall provide written notification to the insurance company's domiciliary commissioner if the custodial agreement with the insurance company has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three (3) business days of the receipt by the custodian of the insurer's written notice of termination or within three (3) business days of the withdrawal of 100% of the account assets.

~~[—13. Banks shall be required to report their capital threshold level, as determined by the standards adopted by United States banking regulators, to the insurer and the Insurance Commissioner. The bank's current capital threshold level shall be reported on enactment of the agreement and within 45 days after the end of each calendar year.~~

~~14. Trust companies shall be required to provide current annual financial statements to the insurer and the Insurance Commissioner within 45 days after the end of each calendar year.]~~

#### **R590-178-6. Requirements for Deposits with Affiliates.**

A. Nothing in this rule shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that

the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within thirty (30) days of the receipt of the notice.

B. The terms of the agreement shall comply with the following:

1. The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.

2. The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.

3. The depositing insurance company may authorize the receiving insurance company:

a. To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company, and

b. To provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation.

#### **R590-178-[5]7. Penalties and Prohibitions.**

A. Insurers found to be or to have been in violation of this rule shall be subject to fine, suspension, and revocation of license or other penalties permitted by Section 31A-2-308.

B. Insurers are not authorized to provide for the custody of their securities except as granted in this rule. Custodial securities held in violation of this rule shall be disregarded in determining and reporting the financial condition of an insurer.

#### **R592-3-8. Enforcement Date.**

The commissioner will begin enforcing this rule 90 days from the rule's effective date.

#### **R590-178-2[6]. Separability.**

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions may not be affected.

**KEY: insurance law**

**Date of Enactment or Last Substantive Amendment: [October 1, 1996]2006**

**Notice of Continuation: September 12, 2001**

**Authorizing, and Implemented or Interpreted Law: 31A-4-108**

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Insurance, Administration

## **R590-225**

Submission of Property and Casualty  
Rate and Form Filings

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28678

FILED: 04/27/2006, 07:55

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update the publication date of an incorporation by reference document and to make changes to the filing correction and withdrawal instructions in Section R590-225-5.

SUMMARY OF THE RULE OR CHANGE: In Subsection R590-225-3(2), the publication dates of three NAIC documents are being updated. In Section R590-225-5, the department is eliminating the requirement for insurers to submit a transmittal in the case of punctuation or spelling errors on previously filed forms.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-201.1, 31A-2-202, and 31A-19a-203

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, 2006; b) "NAIC Instruction Sheet for Property and Casualty Transmittal Document", dated January 1, 2006; and c) "NAIC Uniform Property and Casualty Coding Matrix", dated March 1, 2006

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to this rule will not change the number of policy forms filed with the department but it will just reduce the need to attach a transmittal form to those minor spelling or punctuation form changes filed with the department. This will not increase or decrease our workload or revenues.

❖ LOCAL GOVERNMENTS: This rule and its changes deal solely with the relationship between the department and its licensees and not local governments.

❖ OTHER PERSONS: The changes to this rule will allow property and casualty insurers to file minor changes in their policy and endorsement forms with the department without a transmittal form. Since the transmittal form is now six pages long this change will save companies time but not money except for the minor cost of the form itself.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will allow property and casualty insurers to file with the department minor changes to their policies and endorsement forms without a transmittal form. Since the transmittal form is now six pages long it will save companies time but probably not money, except the minor cost of the form itself.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have only a minor fiscal impact on 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](mailto: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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.****R590-225. Submission of Property and Casualty Rate and Form Filings.****R590-225-3. Documents Incorporated by Reference.**

(1) The department requires that the documents described in this rule shall be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following filing documents are hereby incorporated by reference and are available on the department's web site, <http://www.insurance.utah.gov/RF-Flgs.html>.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, 200~~5~~<sup>6</sup>;

(b) "NAIC Instruction Sheet for Property and Casualty Transmittal Document", dated January 1, 200~~3~~<sup>6</sup>;

(c) "NAIC Uniform Property and Casualty Coding Matrix", dated ~~January 1, 2005~~ March 1, 2006;

(d) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated October 2003;

(e) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated October 2003.

**R590-225-5. General Filing Information.**

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Insurers and filers are responsible for assuring compliance with Utah laws and rules. Filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected as incomplete and returned to the filer. A rejected filing is not considered filed with the department.

(5) Prior filings will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, an ORDER TO PROHIBIT USE will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

(a) No filing transmittal is required when making a correction to misspelled words and punctuation in [clerical or typographical corrections are made to] a filing [previously filed if the corrected filing is submitted within 30 days of the date "Filed" with the department. The filer will need to reference the original filing]. This filing will be considered informational.

(b) No transmittal is required when a clerical correction is made to a previous filing if submitted within 30 days of the date "Filed" with the department. The filer must reference the original filing or include a copy of the original transmittal.

~~(b)~~(c) A new filing is required if ~~[the]~~ a clerical ~~[or typographical]~~ correction ~~[s are]~~ is made more than 30 days after the ~~[filed]~~ date "Filed" with the department ~~[of the original filing]~~. The filer ~~[will need to]~~ must reference the original filing or include a copy of the original transmittal.

(8) Filing withdrawal. A filer must notify the department when ~~[the filer withdraws]~~ withdrawing a previously filed form, rate, or supplementary information.

**KEY: property casualty insurance filing**

**Date of Enactment or Last Substantive Amendment: ~~[July 22, 2005]~~2006**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202; 31A-19a-203**



## Natural Resources, Parks and Recreation

### R651-406

## Off-Highway Vehicle Registration Fees

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28669

FILED: 04/24/2006, 08:37

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule follows Section 41-22-8 that states the board shall establish the registration fees to be paid. These fees are for the development and maintenance of the Off-Highway Vehicle (OHV) Division of State Parks and Recreation.

SUMMARY OF THE RULE OR CHANGE: This change will allow the fee to be raised from \$14 to \$17 covering increased expenses by the OHV section of Parks and Recreation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-22-8

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: With this change from \$14 to \$17 for the annual OHV registration fee, there will be an anticipated \$540,000 per year to the OHV Restricted Fund for the state.

❖ LOCAL GOVERNMENTS: This rule change will not affect the aggregate anticipated cost or savings to local government as it applies only to state rules and parks.

❖ OTHER PERSONS: Persons registering their OHVs will pay an extra \$3 for the annual fee for OHVs in the State.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a person, residing in Utah, does not register their OHV, and is cited by an officer, they will pay a Class C misdemeanor fine for not having a registered OHV in the State of Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no significant impact to businesses. Michael Styler, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2006

AUTHORIZED BY: Mary Tullius, Director

**R651. Natural Resources, Parks and Recreation.**  
**R651-406. Off-Highway Vehicle Registration Fees.**  
**R651-406-1. Annual Registration Fee.**

The annual registration fee is ~~[\$14]~~\$17.

**R651-406-2. Fee For Duplicate Registration.**

The fee for a duplicate certificate of registration is \$3.

**R651-406-3. Fee For Duplicate Numbered Stickers.**

The fee for duplicate numbered stickers is \$5.

**KEY: off-highway vehicles**

**Date of Enactment or Last Substantive Amendment:** ~~October 1, 2004~~ **July 1, 2006**

**Notice of Continuation:** April 18, 2006

**Authorizing, and Implemented or Interpreted Law:** 41-22-8

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**Public Lands Policy Coordinating  
Office, Administration**

**R694-1**

**Archeological Permits**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 28697

FILED: 05/01/2006, 10:46

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139, 2006 General Session, transferred the authority to issue permits for the survey and excavation of archeological resources on state lands from the Division of State History to the Public Lands Policy Coordination Office effective 07/01/2006. This proposed rule will allow the Public Lands Policy Coordination Office to administer the permit program. (DAR NOTE: H.B. 139 (2006) is found at Chapter 292, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: This is a proposed rule which establishes supplementary criteria and process for the issuance and revocation of the permits necessary to work with archeological resources.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-8-305

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: H.B. 139 transferred the existing authority to issue permits from the Division of State History to the Public Lands Policy Coordination Office. Because the authority was simply transferred, there will be no effect to the state budget.

❖ LOCAL GOVERNMENTS: Local government was not affected by the permit process before the permitting authority was transferred, and similarly will not be affected after the transfer.

❖ OTHER PERSONS: Individuals who were required to obtain a permit from the Division of State History will now be required to obtain a permit from the Public Lands Policy Coordination Office. Because permits were also issued to corporations before the transfer of authority and the corporations might have had a number of qualified individuals covered by that permit, and because only individuals will be able to obtain a permit after the transfer, some individuals who did not need to obtain a permit before will be required to obtain a permit after

the transfer of authority. This will require the time and effort to apply for the permit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals who wish to obtain a permit to survey or excavate archeological resources in the state will be required to apply for the permit from the Public Lands Policy Coordination Office, and comply with the terms of its provisions. The proposed rule provides for a process to suspend or revoke a permit for noncompliance, and individuals who do not comply may be affected by the cost of a noncompliance proceeding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will allow independent operators and businesses with qualified employees who work with archeological resources to obtain the necessary permits to operate. The businesses and independent operators currently must obtain this permit from another state agency with the necessary cost in time and effort to apply. There is no cost for the permit, so the only fiscal impact will be the ongoing requirement of the time necessary to apply for the permit. Additionally, because permits may now be granted for an additional year, total time of compliance may be decreased. Any noncompliance proceedings which may be initiated pursuant to the rule will require the time to participate.

Lynn Stevens, Public Lands Policy Coordinator

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

PUBLIC LANDS POLICY COORDINATING OFFICE  
ADMINISTRATION  
Room 5110 STATE OFFICE BUILDING  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

John Harja at the above address, by phone at 801-537-9275, by FAX at 801-537-9226, or by Internet E-mail at JOHNHARJA@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 06/14/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/24/2006 at 6:00 PM, Division of State History, 300 Rio Grande, Zephyr Room, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2006

AUTHORIZED BY: John Harja, Assistant Director for Planning and Policy

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**R694. Public Lands Policy Coordination Office, Administration,  
R694-1. Archeological Permits.  
R694-1-1. Authority.**

These rules are authorized by Section 9-8-305(5).

**R694-1-2. Purpose.**

The purpose of these rules is to establish requirements for the issuance of survey and excavation permits for all lands in the State of Utah, and to insure compliance with permit provisions and the underlying rules and law.

**R694-1-3. Definitions.**

(a) Terms used in this rule are defined in Section 9-8-302.

(b) In addition:

(i) "Full-time professional experience" means work within a position requiring responsibility for progress and completion of a project involving archeological resources.

**R694-1-4. Qualifications of Permit Holders.**

(a) Permits will be issued to those individuals who qualify as a principal investigator, except for those who may otherwise qualify but who have had a permit suspended or revoked pursuant to R694-1-11.

(b) As authorized by Section 9-8-305(2)(b), in lieu of a graduate degree in anthropology, archeology or history, a person requesting a permit may submit evidence demonstrating the ability to design and execute a research project in anthropology, archeology or history, including the collection and analysis of information, presentation of results in an approved and reviewed format, and the subsequent curation of specimens.

(c)(i) As authorized by Section 9-8-305(2)(iii), applicants for a permit may submit evidence of training related to proper methodologies for field procedures, laboratory analysis and reporting within projects involving archeological resources.

(ii) An applicant for a permit wishing to submit evidence pursuant to R694-1-4(c)(i) must demonstrate that the training was of a sufficient duration and a sufficiently broad scope of subject matter to substitute for a full year of full time professional experience.

(d) Experience in Utah prehistoric or historic archeology shall include basic field, associated laboratory analysis and reporting work based within any portion of the general physiographic and cultural regions found within the state boundaries.

**R694-1-5. Application for Permit to Survey.**

(a) A person who wishes to obtain a permit to survey shall obtain and complete an application form and submit the form and all other information required by the form to the Public Lands Policy Coordination Office.

(b) Other required information may include:

(i) Projects initiated under previous permits issued by the State of Utah which remain incomplete as of the date of application.

(ii) The applicant's employer or the name of the applicant's business, if self-employed.

(iii) A copy of an agreement to curate with an authorized curation facility in the name of the applicant or the applicant's employer.

**R694-1-6. Application for Permit to Excavate.**

(a)(i) A person who wishes to obtain a permit to excavate shall complete an application form and submit the original and two copies of the form and all other information required by the form to the Public Lands Policy Coordination Office.

(ii) The application form shall require the applicant to provide the information required by Section 9-8-305(3)(a).

(b) The Public Lands Policy Coordination Office shall forward one copy of the form and all other information requested to the Antiquities Section and one copy to the agency.

(c) If the Public Lands Policy Coordination Office has delegated the authority to issue a permit to excavate to another state agency, pursuant to Rule R694-1-8, a person who wishes to obtain a permit to excavate on the lands owned by that agency shall submit an application to that agency.

**R694-1-7. Review of Permit Applications.**

(a) The Public Lands Policy Coordination Office may, at its sole discretion, seek the advice of one or more principal investigators as part of the review of an application for a permit to survey or a permit to excavate.

(b) Principal investigators who are authorized to provide advice on permits must hold a valid permit issued by the Public Lands Policy Coordination Office and must volunteer for the task.

(c) The Public Lands Policy Coordination Office shall keep a list of those principal investigators who volunteer, and shall make use of their services on a rotational basis, except that the Office shall avoid using the advice of any particular volunteer if a conflict of interest would thereby arise.

(d)(i) The Public Lands Policy Coordination Office shall notify the applicant within 30 calendar days whether or not the application is approved.

(ii) This time may be extended if additional information is required from the applicant.

**R694-1-8. Delegation of Authority to Issue a Permit to Excavate.**

(a) An agency which owns land within the state of Utah may request the delegation of the authority to issue permits to excavate for the lands it owns.

(b) The agency shall request the delegation by letter signed by the agency's authorized representative.

(c) The letter shall contain the proposed terms and conditions of the delegation, which shall include the information required by Section 9-8-305(3)(c)(ii), and agreement with the following conditions:

(i) each person approved for a permit to excavate by the agency shall hold a valid permit to survey from the Public Lands Policy Coordination Office at all times prior to and including the expiration date of the permit, including any extensions; and

(ii) the agency shall consult with the Antiquities Section regarding the research design of the proposed project prior to issuing the permit, and

(iii) permits issued by the agency pursuant to delegation shall contain the provisions required by R694-1-10(a), and for purposes of compliance and enforcement of the provisions of R694-1-10(a), a permit issued by the agency shall be considered a permit issued by the Public Lands Policy Coordination Office, and

(iv) the agency shall refer issues about performance of work by the permit holder to the Public Lands Policy Coordination Office through the process described in R694-1-11, and shall agree to amend, suspend, or revoke a permit according to the final results of that process, and to reinstate a permit only with the concurrence of the Public Lands Policy Coordination Office after compliance with the provisions of R694-1-12, and

(v) the agency and the Public Lands Policy Coordination Office shall review the operations of the delegation agreement at least annually, and

(vi) the Public Lands Policy Coordination Office may revoke the delegation at any time without cause, as provided by Section 9-8-305(3)(d).

(d) The agency and the Public Lands Policy Coordination Office shall formalize the terms of the delegation through a Memorandum of Understanding.

#### **R694-1-9. Time Period for Permits.**

(a) A Permit to Survey shall be effective for either

(i) three years from the date of issuance specified in the permit, or

(ii) for any other period of time

(A) as part of the response to an action initiated under Rule R694-1-11, or

(B) for other administrative needs.

(b)(i) A Permit to Excavate shall be effective for the amount of time reasonably necessary to complete the research design's excavation, laboratory analysis, reporting and curation, as specified by a date of expiration in the Permit.

(ii) The time period of a Permit to Excavate may be extended, upon a showing of good cause to the Public Lands Policy Coordination Office, for a period of time to be specified by a new expiration date.

#### **R694-1-10. Permit Provisions.**

(a) The following provisions shall be included within each permit issued by the Public Lands Policy Coordination Office:

(i) Professional and Ethical Standards

(A) Permit holders shall comply with the individual provisions of the "Code of Conduct" and the "Standards of Research Performance" promulgated by the Register of Professional Archeologists.

(B) If any of the provisions of the Code or Standards is altered, superseded or otherwise affected in any manner by these rules or other law, the rules and law shall take precedence, and permit holders shall comply with the rule or law.

(ii) Persons Employed by the Principal Investigator to Assist in the Field or Laboratory

By engaging in any field or laboratory work under any permit issued by the Public Lands Office, the principal investigator shall insure that persons hired or otherwise engaged to perform such work, or supervise field or laboratory work in the principal investigator's absence, are fully qualified to perform such work, and shall comply with the "Code of Conduct" and "Standards of Research Performance" as required by Rule R694-1-10(a)(i).

(iii) Principal Investigators who are Employed by Others

(Reserved.)

(iv) Survey Methodologies

(Reserved.)

(v) Report and Data Format and Standards

(A) Reports of projects undertaken pursuant to permits issued by the Public Lands Policy Coordination Office shall conform to the format and standards which are attached to and made an integral part of the permit.

(B) The Public Lands Policy Coordination Office may amend the format and standards at any time during the time period of a permit, however, the permit holder shall have the option to continue

to use the original format and standards for projects which are well into the reporting phase.

(C) Reports for individual projects and sites must contain an identification number obtained from the Division of State History prior to the commencement of fieldwork.

(D) Reports for individual projects must list all individuals who served in a supervisory capacity on the project.

(vi) Completion of Reports in a Timely Manner

(A) Reports of projects undertaken pursuant to any permit issued by the Public Lands Policy Coordination Office shall be completed and submitted to the agency and the Division of State History in a timely manner.

(B)(1) An agency may establish the parameters of timely manner through an agreement with the Division of State History and the Public Lands Policy Coordination Office.

(2) If an agreement has been finalized, the permit shall reference the agreement as the requirement for submission of reports for projects involving that agency's lands.

(3) For purposes of the requirements of R694-1-10(a)(vi)(B)(1), the term agency shall include an agency or other entity of the federal government.

(vii) Curation of Specimens

(A) The holder of any permit issued by the Public Lands Policy Coordination Office shall either hold a valid agreement with an authorized curation facility, or be covered under the authority of a curation agreement held by the employer of the permit holder, at all times during the time period of the permit.

(B) The holder of any permit issued by the Public Lands Policy Coordination Office shall keep the Office notified of any changes to the expiration date of the curation agreement required by R694-1-10(a)(vii)(A), or a change in employment.

(C) All specimens collected pursuant to any permit issued by the Public Lands Policy Coordination Office shall be deposited with the appropriate curation facility in a timely manner.

(viii) Discovery of Human Remains

Any person working under the authority of any permit issued by the Public Lands Policy Coordination Office who discovers human remains shall cease further activity in the area and shall notify the landowner, the antiquities section, and the appropriate law enforcement agencies, as required by Section 9-9-403 and 76-9-704.

(ix) Access to Sites and Site Records

The holder of any permit issued by the Public Lands Policy Coordination Office agrees to cooperate with the Office to allow authorized Office employees access, at any reasonable time, to field and workings and records for the purpose of assuring compliance with the law, rules or permit provisions, subject to the provisions of other law, regulation or rule.

(x) Compliance with Law, Rule, and Permit Conditions

(A) Any person working under the authority of a permit issued by the Public Lands Policy Coordination Office shall comply with all laws, rules and permit conditions.

(B) Failure to comply may result in amendments to or the suspension or revocation of the permit, in addition to any other penalties authorized by law or rule.

(xi) The holder of the permit shall keep the Public Lands Policy Coordination Office apprised of any changes in the permittee's employment or business address and phone number, and changes in other business information as the Office may require.

(b) Permits issued by the Public Lands Policy Coordination Office may include such other provisions as the Office may deem necessary based on an individual's application.

(c) Permits to excavate issued by the Public Lands Policy Coordination Office shall require that the permit holder also hold a valid permit to survey issued by the Public Lands Policy Coordination Office at all times prior to and including the expiration date of the permit to excavate, including any extensions.

**R694-1-11. Amendment, Suspension or Revocation of Permits.**

(a)(i) Permits may be amended, suspended or revoked pursuant to the terms of this rule.

(ii) Permits may be amended, suspended, or revoked for violations of law, rule or permit provisions, or upon a finding by the Public Lands Policy Coordination Office that a permit holder is unfit to hold a permit due to a judicial or administrative determination concerning the character or competence of the individual.

(b)(i) Any agency may file a petition with the Public Lands Policy Coordination Office concerning the work performed under the provisions of any Permit to Survey or Permit to Excavate if the agency believes the work has been done in a manner which is contrary to law, rule or permit provisions.

(ii) The petition shall state with specificity the facts and circumstances involved and the law, rule or permit provision at issue, and shall be signed by the agency's authorized representative.

(iii) Each agency shall keep the Public Lands Policy Coordination Office informed of the name of the agency's authorized representative on an ongoing basis.

(c) The Public Lands Policy Coordination Office shall investigate the issues raised by the petition.

(d) The Public Lands Policy Coordination Office may initiate investigations into a permit holder's compliance with law, rule and permit provisions at its sole discretion, and may initiate a proceeding to amend, suspend or revoke a permit as a result of those investigations.

(e)(i) The Public Lands Policy Coordination Office may, at its sole discretion, seek the advice of one or more principal investigators as part of an investigation initiated by either petition or itself.

(ii) Principal investigators who are authorized to provide this advice must hold a valid permit issued by the Public Lands Policy Coordination Office and must volunteer for the task.

(iii) The Public Lands Policy Coordination Office shall keep a list of those principal investigators who volunteer, and shall make use of their services on a rotational basis, except that the Office shall avoid using the advice of any particular volunteer if a conflict of interest would thereby arise.

(f) The Public Lands Policy Coordination Office may choose to employ either informal or formal hearings as authorized by Section 63-46b-3(a)(v).

(g) The Public Lands Policy Coordination Office may resolve issues raised by a petition or by its own proceedings by

(i) dismissing the petition or otherwise terminating the proceedings, or

(ii) amending any of the provisions of an existing permit, or

(iii) imposing new conditions within an existing permit, or

(iv) suspending the permit, or

(v) revoking the permit, or

(vi) any other relief the Office may consider appropriate.

(h) The Public Lands Policy Coordination Office will immediately inform the Division of State History if a permit is suspended or revoked.

(i) The final notice of suspension or revocation shall state the reasons for the suspension or revocation.

**R694-1-12. Reinstatement of Permits.**

(a) The final notice of suspension or revocation from a proceeding held pursuant to R694-1-11 shall specify the conditions for reinstatement of the permit.

(b) The holder of the suspended or revoked permit may request reinstatement by submitting a letter to the Public Lands Policy Coordination Office indicating the reasons the reinstatement should be granted.

(c) The Public Lands Policy Coordination Office may request additional information.

(d) Reinstatement shall be granted at the sole discretion of the Public Lands Policy Coordination Office.

(e) A principal investigator who has had a permit suspended or revoked shall not be eligible for another permit until the principal investigator becomes eligible for reinstatement of the original permit.

**R694-1-13. Waiver of Provisions.**

(a) The Public Lands Policy Coordination Office may grant a waiver of the provisions of these rules, except for statutory provisions, in the interest of fairness, impossibility of performance, or other exigent or extenuating circumstances.

(b) This provision is to be employed to allow the Public Lands Policy Coordination Office to deal with generally unforeseen circumstances, and should not be employed to grant broad scale general exceptions to the requirements of Rule 694-1.

**R694-1-14. Confidentiality.**

(Reserved.)

**KEY: archeological permits**

**Date of Enactment or Last Substantive Amendment: 2006**  
**Authorizing, and Implemented or Interpreted Law: 9-8-305**



Transportation, Motor Carrier, Ports of  
Entry  
**R912-8**  
Minimum Tire, Axle and Suspension  
Ratings for Heavy Vehicles and the Use  
of Retractable or Variable Load  
Suspension Axles in Utah

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 28703

FILED: 05/01/2006, 20:08

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was accidentally allowed to expire on 04/28/2006. This filing puts the rule back in place.

SUMMARY OF THE RULE OR CHANGE: The proposed rule sets minimum ratings for heavy vehicles.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 72-1-102, 72-7-404, 72-7-406, and 72-1-201

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule will have no new effect, either positive or negative on the state budget. The rule has been in effect up until 04/28/2006.
- ❖ LOCAL GOVERNMENTS: This rule does not effect local governments because in Utah they do not operate trucks of the size regulated by this administrative rule; therefore, there is no cost to them.
- ❖ OTHER PERSONS: This rule will have no new effect, either positive or negative on the budget of other persons. The rule has been in effect up until 04/28/2006.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will have no new effect, either positive or negative on the budget of other persons. The rule has been in effect up until 04/28/2006.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no new affect, either positive or negative on the budget of businesses. The rule has been in effect up until 04/28/2006. John R. Njord, Executive Director

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

TRANSPORTATION  
MOTOR CARRIER, PORTS OF ENTRY  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at [jbeadles@utah.gov](mailto:jbeadles@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 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2006

AUTHORIZED BY: John R. Njord, Executive Director

**R912. Transportation, Motor Carrier, Ports-of-Entry.**  
**R912-8. Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah.**

**R912-8-1. Authority.**

Sections 72-1-102, 72-7-404, 72-7-406, 72-1-201.

**R912-8-2. Definitions.**

(1) "Axle Group" means any axles on a vehicle that are within eight feet of each other.

(2) "Bridge Formula" as defined in Section 72-7-404 of the Utah Code Annotated.

(3) "Fixed Axle" means an axle that is not steerable, self steering or retractable.

(4) "Legal Weight" as defined in Section 72-7-404 of the Utah Code Annotated.

(5) "Load Rating" means the maximum load that the equipment is rated to carry as designated by the Federal Motor Carrier standards.

(6) "Variable Load Suspension (VLS) Axle" means an axle that can be loaded mechanically to various capacities.

(7) "Retractable Axles" means an axle that can be lifted from the pavement surface, but cannot mechanically vary its weight-bearing capability.

(8) "Tire Scrubbing" means side movement of the tire associated with the turning movement of a vehicle.

(9) "Quad Axle Group" means a group of four consecutive fixed axles.

**R912-8-3. Purpose.**

(1) The purpose of this rule is to promote safety and reduce the pavement damage resulting from operating with underrated tires or suspensions and/or retractable or VLS axles. Some trucking firms have utilized underrated tires, axles and suspensions systems which cannot safely and practically support excess weight, and adjacent axles become overloaded. Fixed axles scrub sideways to some degree when a vehicle is operated through a turning movement. This scrubbing is damaging to the pavement surface. The degree to which a tire scrubs is related to the distance between the extreme fixed axles in an axle group. Quad axle groups increase tire scrubbing considerably because of the extreme axle spacings involved.

(2) Some companies utilize retractable or VLS axles to improve the load-carrying flexibility of their vehicles. These axles increase the weight that the vehicle can legally carry, while providing needed maneuverability at loading and unloading sites. Concrete and construction companies have used these axles on their vehicles to transport materials to construction sites, causing a minimum of pavement and bridge damage. These axles can then be retracted or "unloaded" to allow a driver to more easily back up or steer. Since they can be misused and abused, it is in the best interest of safety and infrastructure preservation to establish and enforce specific operating requirements for vehicles so equipped in the state of Utah.

**R912-8-4. Provisions.**

(1) Vehicles with a gross vehicle rating exceeding 26,000 pounds are limited as follows:

(A) Axles shall not exceed their designed load capacity. Documentation of axle capacity, such as an attached data plate or written certification from a vendor, shall be available with each vehicle.

(B) Single tires shall be a minimum size of 8.25 x 20. All tires shall meet Federal Motor Carrier Safety load rating requirements.

(C) No more than three fixed axles shall be allowed in any group. Retractable or VLS axles installed after January 1990 shall be self-steering on power units and when augmenting a tridem group on trailers. Non-divisible loads may be exempt from these restrictions with written approval from the Utah Department of Transportation (UDOT).

(D) No axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements.

(E) Controls for raising and lowering retractable or VLS axles may be located in the cab of the power unit, but the controls regulating pressure to such axles shall be positioned outside the cab so as to be inaccessible to the driver when the vehicle is in motion.

(F) Tires, axles or suspension systems which are unusual or which vary from these requirements shall be reviewed and approved by UDOT prior to operation.

**KEY: transportation, weight, ratings, permits**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 72-1-102; 72-7-404; 72-7-406; 72-1-201**

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## Transportation, Preconstruction R930-3 Highway Noise Abatement

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28677

FILED: 04/26/2006, 16:31

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rulemaking action is to clarify that only interstate or limited access highways qualify for noise walls.

SUMMARY OF THE RULE OR CHANGE: This rule limits Type 1 noise abatement projects to interstate and limited access highways

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-6-111

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule amendment will result in savings because it eliminates a category of road eligible for noise walls.

❖ LOCAL GOVERNMENTS: This rule does not apply to local governments since only the department can build noise walls on state roads; therefore, there should be no cost or savings.

❖ OTHER PERSONS: This rule does not affect costs of other persons since only the department can build noise walls on state roads.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not affect costs of other persons since only the department can build noise walls on state roads.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not affect businesses since only the department can build noise walls on state roads. John R. Njord, Executive Director

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

TRANSPORTATION  
PRECONSTRUCTION

CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@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 06/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/16/2006

AUTHORIZED BY: John R. Njord, Executive Director

### **R930. Transportation, Preconstruction.**

#### **R930-3. Highway Noise Abatement.**

##### **R930-3-0. Purpose.**

The following is generally consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise, 23 CFR 772, which is hereby adopted and incorporated by reference, and in accordance with Utah Code Ann. Section 72-6-111. It is provided to address highway noise impacts and to determine the conditions under which noise abatement may be approved.

##### **R930-3-2. Applicability.**

(1) Type I Projects. Noise abatement shall be considered for Type I projects that are on Interstate or Limited Access Highways where noise impacts are identified. A new or proposed subdivision or other development must have obtained a formal building permit from the appropriate local government agency for final plans for development before the issuance of the final environmental decision document.

(2) Type II Projects. UDOT does not provide a noise retrofit (Type II) program to construct noise abatement measures along existing state transportation facilities.

**KEY: transportation, barrier, traffic noise abatement, highways**

**Date of Enactment or Last Substantive Amendment: ~~July 20, 2004~~ 2006**

**Notice of Continuation: January 22, 2002**

**Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-101**

◆ ————— ◆

## Transportation Commission, Administration R940-1 Establishment of HOT-Lane Toll Rates

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 28675

FILED: 04/25/2006, 12:06

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is needed in order to comply with the statutory directive for the transportation commission to set tolls in administrative rule.

SUMMARY OF THE RULE OR CHANGE: The proposed rule sets the initial toll rate at \$50 a month, with the Department allowed to raise it up to \$100 a month depending on demand.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-6-118

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule will add money to the state budget, but it is all dedicated to the Tollway Restricted Account. There will be some costs for the infrastructure needed for the tolls, but it is impossible to estimate what it will be.

❖ LOCAL GOVERNMENTS: This rule does not affect local governments unless a local government uses the HOT Lane and then it will be subject to the same requirement.

❖ OTHER PERSONS: This rule will cost people who choose to use the HOT Lane \$50 a month.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will cost people who choose to use the HOT Lane \$50 a month.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Whether a business incurs the \$50 cost is voluntary. The rule will only affect a business if it chooses to take advantage of the time-savings by using the HOT Lane. John R. Njord, Executive Director

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

TRANSPORTATION COMMISSION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@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 06/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/16/2006

AUTHORIZED BY: John R. Njord, Executive Director

**R940. Transportation Commission, Administration.****R940-1. Establishment of HOT-Lane Toll Rates.****R940-1-1. Definitions.**

(1) "Commission" means the Transportation Commission, which is created in Utah Code Ann. Section 72-1-301;

(2) "Department" means the Utah Department of Transportation, which is created in Utah Code Ann. Section 72-1-101;

(3) "HOT Lane" means a High Occupancy Vehicle Lane as designated pursuant to Utah Code Ann. Section 41-6a-702 and Utah Admin. Code R926-9.

(4) "Toll" means the fee or charge that the operator of a single-occupant motor vehicle must pay for the privilege of driving on a HOT Lane.

**R940-1-2. Factors To Be Used in Setting Tolls.**

In deciding what Toll is appropriate, the Commission balances the need to obtain revenue for enforcement and maintenance of the HOT Lane against the effect that a certain Toll amount will have on demand. The goal is to set a price that encourages optimal use of the HOT Lane.

**R940-1-3. Base Toll Rate and Range.**

(1) The initial Toll for the HOT Lane is \$50 per month.

(2) With the Commission's approval, the Department may increase the Toll from \$50 per month to an amount not to exceed \$100 per month if it finds that demand on the HOT Lane is too high and needs to be reduced in order to keep the lane freely flowing. Evidence of demand can be shown by traffic counts and evidence of traffic congestion.

**R940-1-4. Use of Toll Revenues.**

(1) Pursuant to state law, Tolls are deposited in the Tollway Restricted Special Revenue Fund established in Utah Code Ann. Section 72-2-120.

(2) Monies from the fund may be used for acquisition of right-of-way and the design, construction, reconstruction, operation, maintenance, and enforcement of transportation facilities within the corridor served by the HOT Lane pursuant to Utah Code Ann. Section 72-6-118.

**KEY: transportation, tolls, HOT Lanes, motor vehicles**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 72-6-118**

◆ ————— ◆  
Workforce Services, Employment  
Development

**R986-400**

General Assistance and Working  
Toward Employment

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28693

FILED: 04/29/2006, 16:57

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment makes several clarifications to existing language.

SUMMARY OF THE RULE OR CHANGE: An individual should not be ineligible if he or she has dependent children in the home but if the children are in the home 50% of the time or more, the client will be placed on the Family Employment Program (FEP) and not General Assistance (GA). The incapacity for work must be expected to last 30 days after the date of application. Several changes were made to more closely align GA to FEP to make it easier to administer such as the \$500 threshold must be in the Utah market and we will accept disability determinations from mental health therapists and a minor must have been living independently for 12 months, not six. Liens for workers' compensation will no longer be required since we have no means to require carriers to reimburse us. Section R986-400-11 will be moved to Rule R986-200 where it will apply to FEP and GA customers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 35A-3-401 and 35A-3-402, and Subsection 35A-1-104(4)

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no costs or savings to the state budget because these changes are not expected to affect our case load and many reflect current practice.
- ❖ LOCAL GOVERNMENTS: There will be no costs or savings to local governments because this is a state funded program and local governments do not pay into this program.
- ❖ OTHER PERSONS: There will be no costs or savings to any other persons. These changes are clarifications and reflect current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs to any other persons. These changes are clarifications and reflect current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact by these changes on business as these changes are only being made to programs financed by the state which in no way affects businesses monetarily. Tani Downing, Executive Director

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

WORKFORCE SERVICES  
EMPLOYMENT DEVELOPMENT  
140 E 300 S  
SALT LAKE CITY UT 84111-2333, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/14/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2006

AUTHORIZED BY: Tani Downing, Executive Director

**R986. Workforce Services, Employment Development.****R986-400. General Assistance and Working Toward Employment.****R986-400-402. General Provisions.**

(1) GA provides temporary financial assistance to single persons and married couples who have no dependent children residing with them 50% or more of the time and who are unemployable due to a physical or mental health condition.

(2) Unemployable is defined to mean the individual is not capable of earning \$500 per month in the Utah labor market. The incapacity must be expected to last 30 days after the date of application or more.

(3) Drug addiction and/or alcoholism alone is insufficient to prove the unemployable requirement for GA as defined in Public Law 104-121.

(4) For a married couple living together only one must meet the unemployable criteria. The spouse who is employable will be required to meet the work requirements of WTE unless the spouse can provide medical proof that he or she is needed at home to care for the unemployable spouse. Medical proof, consisting of a medical statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102, or a licensed psychologist, is required. The medical statement must include all of the following:

- (a) the diagnosis of the spouse's condition;
- (b) the recommended treatment needed or being received for the condition;
- (c) the length of time the client will be required in the home to care for the spouse; and
- (d) whether the client is required to be in the home full time or part time.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for a period of at least ~~six~~ twelve consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

(9) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, as defined by 20 CFR Part 416.1321 through 416.1330.

**R986-400-403. Proof of Unemployability.**

(1) An applicant must provide current medical evidence that he or she is not capable of working and earning \$500 per month due to a physical or mental health condition and that the condition is expected to last at least 30 days from onset. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102, ~~or an agency involved in disability determination, such as VA or the State Office of Rehabilitation~~.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(3) If the illness or incapacity is expected to last longer than 12 months, the client must apply for SSDI/SSI benefits.

(4) Full-time or part-time participation in post-high school education or training is considered evidence of employability rendering the client ineligible for GA financial assistance. If the Department believes work readiness or occupational skills enhancement opportunities will lead to employability, those services can be offered for a maximum of three months if the client is otherwise eligible.

**R986-400-404. Participation Requirements.**

(1) The client and spouse must participate, to the maximum extent possible, in an assessment and an employment plan as provided in R986-200. The only education or training supported by an employment plan for GA recipients is short term skills training as described in R986-400-403.

(2) The employment plan must include obtaining appropriate medical or mental health treatment, or both, to overcome the limitations preventing the client from becoming employable. The employment plan must provide that all adults age 19 and above who do not qualify for coverage under any other category of Medicaid and who are not covered by or do not have access to private health insurance, Medicare or the Veterans Administration Health Care System must enroll in the Primary Care Network (PCN) through the Department of Health. If a client cannot enroll in PCN because the Department of Health has placed a cap on PCN enrollment, the requirement will be excused during the period enrollment is impossible. The Department may, at its discretion, develop a program whereby eligible clients will be allowed to pay the enrollment fee in installments.

(3) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(4) A client is exempt from the requirements of paragraphs (1) and (2) of this section if the client has been approved for SSI, is waiting for the first check, and has signed an "Agreement to Repay Interim Assistance" Form.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, but not limited to UI, SSI/SSDI, VA Benefits, and Worker[']s Compensation.

~~**R986-400-406. Lien Agreement for Workers Compensation Applicants.**~~

~~(1) A client who has applied and appears eligible for Workers Compensation benefits may be provided with GA financial assistance pending a determination on the application for Workers Compensation. To be eligible under this paragraph, the client must sign a "Repayment of General Assistance and Lien Agreement" form and agree to reimburse the Department, or allow the Department to recover, from either the insurance carrier or the employer, the GA financial assistance paid to the client pending the determination on the Workers Compensation claim.~~

~~(2) If the Workers Compensation insurance carrier or the employer denies the claim for benefits, the client must file and cooperate to the maximum extent possible in pursuing a claim through the Labor Commission.~~

**R986-400-40[7]6. Failure to Comply with the Requirements of an Employment Plan.**

(1) If a client fails to comply with the requirements of the employment plan without ~~good~~reasonable cause, financial assistance will be terminated immediately. Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling~~[Good cause under this paragraph means] and may include reasons like verified illness[7] or extraordinary transportation problems[7] or extraordinary circumstances as determined by the employment counselor~~.

(2) If a client's financial assistance has been terminated under this section, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client must reapply and participate to the maximum extent possible in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and participating to the maximum extent possible in the required employment activity; and

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

**R986-400-40[8]7. Income and Assets Limits and Amount of Assistance.**

(1) The provisions of R986-200 are used for determining asset and income eligibility except;

(a) the income and assets of an SSI recipient living in the household are counted if that individual is legally responsible for the client;

(b) the total gross income of an alien's sponsor and the sponsor's spouse is counted as unearned income for the alien. If a person sponsors more than one alien, the total gross income of the sponsor and the sponsor's spouse is counted for each alien. Indigent aliens, as defined by 7 CFR 273.4(c)(3)(iv), are not exempt. [

~~(2) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, as defined by 20 CFR Part 416.1321 through 416.1330.]~~

(3) The financial assistance payment level is set by the Department and available for review at all Department local offices.

#### **R986-400-40[9]8. Time Limits.**

(1) An individual cannot receive GA financial assistance for more than 24 months out of any 60-month period. Months which count toward the 24-month limit include any and all months during which any client who currently resides in the household received a full or partial financial assistance payment beginning with the month of March, 1998.

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

#### **[R986-400-411. GA for Transient Individuals.**

~~A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.~~

]

#### **R986-400-452. General Provisions.**

(1) Working Toward Employment (WTE) provides financial assistance on a short term basis to single persons and married couples who have no dependent children residing with them 50% or more of the time and who are unemployable because they lack employment skills.

(2) At least one household member must be at least 18 years old or legally or factually emancipated. Factual emancipation is defined in R986-400-402.

(3) As a condition of eligibility, a client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(4) All clients must cooperate in obtaining any and all other benefits or sources of income to which the client may be entitled except that a client who has applied for SSI benefits is ineligible for WTE. If a client applies for SSI, WTE financial assistance is terminated.

(5) A person eligible for Bureau of Indian Affairs assistance is not eligible for WTE financial assistance.

(6) If an applicant appears to be eligible for the Refugee Resettlement Program (RRP) the applicant must comply with the requirements of RRP and will be paid out of funds for that program. If found eligible for RRP, the applicant is ineligible for WTE.

#### **R986-400-453. Participation Requirements.**

(1) All applicants and spouses must participate in an assessment and an employment plan as found in R986-200. In addition to the requirements of an employment plan as found in R986-200-210, a client must, as a condition of receipt of financial assistance, register for work and accept any and all offers of

appropriate employment, as determined by the Department. Appropriate employment is defined in R986-400-404.

(2) The employment plan of each recipient of WTE financial assistance must contain the requirement that the client participate 40 hours per week. The client must spend those hours in the same activities described for a primary parent under FEPTP as found in R986-200-215(3). Married couples cannot share the performance requirements and each client must participate a minimum of 40 hours per week.

(3) Participation may be excused only if the client can[

~~(a) verify illness; or~~

~~(b)] show [other good]reasonable cause as defined in R986-400-406(1)[determined by the Department. Good cause may include, but is not limited to, such things as death or grave illness in the immediate family or extraordinary transportation problems].~~

#### **R986-400-454. Failure to Comply with the Requirements of an Employment Plan.**

(1) If a client fails to comply with the requirements of the employment plan without [~~good~~]reasonable cause as defined in R986-400-406(a), financial assistance will be terminated immediately.~~[Good cause under this paragraph means verified illness, lack of transportation, or extraordinary circumstances as determined by the employment counselor.]~~

(2) Advanced notice of termination is not required.

(3) If there are two clients in the household and only one client fails to comply, financial assistance for both will be terminated.

(4) Once a client or household's financial assistance has been terminated for failure to comply with the employment plan, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client or couple must reapply and actively participate in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client or couple will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and actively participating in the required employment activity;

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

#### **R986-400-455. Income and Assets Limits and Calculation of Assistance Payment.**

(1) Income and asset determination and limits are the same as for FEP found in R986-200.

(2) The amount of financial assistance available for payment to a client is based on the number of hours of participation. Payment is made twice per month and only after proof of participation. The base amount of assistance is equal to the GA financial assistance payment for the household size. The base GA payment is then prorated based on the number of hours of participation for each household member, up to a maximum of 40 hours of participation per household member per week. In no event can the financial assistance payment per month for a WTE household be more than for the same size household receiving financial assistance under GA. Payment of financial assistance cannot be made for any period during which the client does not participate.

(3) The base GA financial assistance payment level is determined by the State Legislature and available upon request.

(4) Each WTE household member will receive the sum of \$45 per month regardless of number of hours the client participates~~[participation]~~. This sum is intended to be used for participation expenses.

**R986-400-456. Time Limits.**

(1) An individual cannot receive WTE financial assistance for more than seven months out of any 18-month period.

(2) In addition to the seven months out of any 18-month period time limit, there is a 24-month life time limit for WTE financial assistance.

(3) Months which count toward the seven month time limit and the 24-month limit include any and all months during which any

client who currently resides in the household received a full or partial financial assistance payment.

(4) There are no exceptions or extensions to the time limit.

(5) If WTE financial assistance is terminated due to the time limit, advanced written notice is not required.

**KEY: general assistance, working toward employment**

**Date of Enactment or Last Substantive Amendment: ~~January 1, 2004~~2006**

**Notice of Continuation: September 14, 2005**

**Authorizing, and Implemented or Interpreted Law: 35A-3-401; 35A-3-402**



**End of the Notices of Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

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## Commerce, Occupational and Professional Licensing

### **R156-46b**

#### Division Utah Administrative Procedures Act Rules

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 28673  
FILED: 04/25/2006, 10:17

##### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 63-46b-1(6) provides that agencies may enact rules affecting or governing adjudicative proceedings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was last reviewed in 2001, no written comments have been received by the Division with respect to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule clarifies the provisions of Title 63, Chapter 46b, as it applies to the Division's adjudicative proceedings. Therefore, the rule should be continued.

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:

W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 04/25/2006



## Community and Culture, Housing and Community Development

### **R199-11**

#### Community Development Block Grants (CDBG)

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 28647  
FILED: 04/19/2006, 08:13

##### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under executive order dated November 1, 1985, by Governor Norman Bangerter; as authorized by section 102(a)(1) of the Housing and Community Development Act of 1974, as amended; and Subsection 9-4-202(2) et seq. This rule permits the state to receive and distribute to units of general local government community development block grants (CDBG) from the federal department of Housing and Urban Development; and to assist in developing viable communities by providing decent housing, a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued: 1) to continue the purposes of the CDBG program which is to receive and distribute to units of general local government CDBGs from the federal department of Housing and Urban Development; and 2) to assist in developing viable communities by providing decent housing, a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.

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

COMMUNITY AND CULTURE  
HOUSING AND COMMUNITY DEVELOPMENT  
Room 500  
324 S STATE ST  
SALT LAKE CITY UT 84111-2388, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Keith Heaton at the above address, by phone at 801-538-8700, by FAX at 801-538-8888, or by Internet E-mail at kheaton@utah.gov

AUTHORIZED BY: Richard Bradford, Director

EFFECTIVE: 04/19/2006

Education, Administration  
**R277-513**  
Dual Certification

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28700  
FILED: 05/01/2006, 14:14

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-6-104(1)(a) permits the Utah State Board of Education to issue licenses for educators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Upon review of this rule, it was determined that the rule needs to be continued to provide the Utah State Office of Education Educator Licensing Section an opportunity to recommend and the State Board of Education an opportunity to consider amendments or repeal.

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

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 05/01/2006

Education, Administration  
**R277-517**  
Athletic Coaching Certification

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28701  
FILED: 05/01/2006, 14:14

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-6-104(1)(a) permits the Utah State Board of Education to issue licenses for educators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because the athletic coaching certification is a valid process to ensure that coaches receive necessary preparation and training in the specific areas of their assignment including basic first aid and adult CPR training. Also, because many coaches are not licensed, specific training is necessary. This

rule may be amended in the near future to update educator licensing terminology and statute changes.

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

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 05/01/2006

◆ ————— ◆  
**Health, Health Systems Improvement,  
Primary Care and Rural Health  
R434-30  
Primary Care Grants Program for  
Medically Underserved Populations**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28644  
FILED: 04/18/2006, 15:12

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-304 states the department shall establish rules in accordance with Title 63, Chapter 46a, governing the process and criteria for awarding grants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received. No opposition is expected. A verbal comment was received requesting the expansion of the Primary Care Grants Program to include model practices in the delivery of primary care, in order for them to have a mechanism to promote and improve statewide health care delivery.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule allows the department to proceed in awarding grants to public and nonprofit entities to provide primary health care services to medically underserved populations.

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT,  
PRIMARY CARE AND RURAL HEALTH  
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:  
Erin L Olsen or Don Beckwith at the above address, by phone at 801-538-6214 or 801-538-6818, by FAX at 801-538-6387 or 801-536-0940, or by Internet E-mail at elolsen@utah.gov or dbeckwith@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/18/2006

◆ ————— ◆  
**Human Services, Recovery Services  
R527-200  
Administrative Procedures**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28670  
FILED: 04/24/2006, 10:48

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule establishes procedures for informal adjudicative proceedings as required by Section 63-46b-5 of the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued in order for the Office of Recovery Services to continue utilizing informal adjudicative proceedings.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Kristen Lowe at the above address, by phone at 801-536-0347, by FAX at 801-536-8833, or by Internet E-mail at [klowe@utah.gov](mailto:klowe@utah.gov)

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 04/24/2006

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
 Recreation  
 R651-201  
 Definitions**

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

DAR FILE No.: 28622  
 FILED: 04/18/2006, 14:59

**NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 73, Chapter 18, states, "It is the policy of this state to regulate and promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws and to adopt and pursue an educational program in relation thereto." In order to accomplish these goals, terms used most frequently in the rules on boating and vessels need to be defined for users of Utah waters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Definitions of terms needs to be continued in order to alert and educate the recreational user of state properties and facilities. This will help protect state parks and their natural and cultural resources from misuse or damage. Such items could include watersheds, park amenities, wildlife and flora and fauna. The board is given the authority to make rules for the public to follow.

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

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

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**Natural Resources, Parks and  
 Recreation  
 R651-202  
 Boating Advisory Council**

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

DAR FILE No.: 28623  
 FILED: 04/18/2006, 15:00

**NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-18-3.5 states, "The board may appoint an advisory council representing various boating interests to seek recommendations on state boating policies." The board appoints those who are representative of the contingency for the interest(s) they represent. This rule allows them to do so.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: With so many water safety issues in the State of Utah, this rule is necessary to help with boating safety and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-203  
Waterway Marking System**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28626  
FILED: 04/18/2006, 15:02

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-18-4 allows the board to promulgate rules in creating a uniform waterway marking system that shall be obeyed by all vessel operators and follows with the placement of waterway markers, zoning areas, and fees to be paid by such operators who carry passengers for hire on the waters of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule will always be necessary for the safety of the public operating vessels on the waters of Utah in an appropriate manner and in designated areas and should be continued. In doing so, this helps to protect all users of the waters here for recreational purposes.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-204  
Regulating Waterway Markers**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28624  
FILED: 04/18/2006, 15:00

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-4(2) allows the board to promulgate rules regarding placement of waterway markets and other permanent or anchored objects on the waters of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is currently in force to give direction for all vessel operators using the waterways of Utah. It is a viable and important rule for safety and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-205  
Zoned Waters**

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 28625  
FILED: 04/18/2006, 15:00

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-4(1)(c) allows the board to promulgate rules, such as zoning certain waters of the state of Utah to prohibit the operation of vessels or motors for safety and health purposes only.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Zoning waterways protects boaters on certain, identified waters in Utah. This rule is for safety of recreational activities on the water and should be continued. It varies from types of bodies of water where actual footage is used for restrictions (i.e., Deer Creek) to smaller bodies of water where no motors can be used at all (i.e., Palisade). Safety of the recreating public should continue to be supported.

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

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

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006



**Natural Resources, Parks and Recreation  
R651-207  
Registration Fee**

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 28627  
FILED: 04/18/2006, 15:02

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-7(2) states that under Registration Requirements, the owner of each motorboat and sailboat is required to be registered by Utah, and shall file an application for registration on forms approved by the Division. The board is required to set fees for services and/or products. The board is has the power by statute, to set rules identifying specific fees, Subsection 63-11-17(8)(a). This rule clearly identifies the \$10 fee for the recreating public who own a motorboat or sailboat.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order to make sure that those who use motorboats and sailboats know and understand the registration requirements for Utah, this rule should be continued. Registration is an important tool that is used to keep a record of motorboat and sailboat users in Utah.

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

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

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006



**Natural Resources, Parks and Recreation  
R651-208  
Backing Plates**

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 28628  
FILED: 04/18/2006, 15:02

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-7(4) explains assigned numbers and their placement on vessels so they will be visible to law enforcement officers. If the decals cannot be seen, they may be mounted on a backing plate and displayed where appropriate. This rule defines where the decals are displayed on backing plates, and gives that information in a concise, condensed manner of the statute, readily available for those who register motorboats or sailboats.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary and needed for ease of identification, safety issues, law enforcement matters, etc., and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
PARKS AND RECREATION  
Room 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

Natural Resources, Parks and Recreation  
**R651-210**  
Change of Address

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 28629  
FILED: 04/18/2006, 15:04

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-7(13) instructs the registered owner to notify the Division within 15 days when the address listed on the register card becomes invalid or inaccurate. This rule makes it clear what a registered owner needs to do to keep his address current with the state. It summarizes the text in the statute for better understanding by registered owners of motorboats and/or sailboats.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue as it gives the Division the ability to track a registered owner of a motorboat or sailboat, and states that it is the owner's responsibility to notify the Division or agent of the Division of the change of address.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
PARKS AND RECREATION  
Room 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

Natural Resources, Parks and Recreation  
**R651-211**  
Assigned Numbers

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 28630  
FILED: 04/18/2006, 15:04

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-18-7 explains registration requirements, exemptions, agents, public records, period of registration and renewal expiration, notice of transfer

of interest or change of address, duplicate registration, invalid registration and powers of the board to designate the suffix to assigned numbers. The rule more clearly defines what the board can do to govern the use of the state park system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A motorboat or sailboat registration and number are necessary for the tracking of vessels while being used on the waters of Utah. The registration and number designate the state, county, and type of vessel that is owned. This is an important tool in tracking and showing the powers of the board and should continue.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
PARKS AND RECREATION  
Room 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006



Natural Resources, Parks and Recreation  
**R651-212**  
Display of Yearly Registration Decals and Month of Expiration Decals

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR File No.: 28631  
FILED: 04/18/2006, 15:04

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-7(18)(b) states that the board may adopt rules for the display of registration decals.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Displaying registration decals makes it easy for identification of vessels by law enforcement officers. If a registration is not displayed in plain sight, the officers have to stop the vessel to make sure the decal is current and identify the operators. For safety and ease of identification of vessels on the waters in Utah, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
PARKS AND RECREATION  
Room 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006



Natural Resources, Parks and Recreation  
**R651-213**  
Dealer Numbers and Registrations

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR File No.: 28632  
FILED: 04/18/2006, 15:05

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-7(18)(c) states that the board may adopt rules for issuing dealer numbers and registrations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Any person acting as a vessel dealer who has established a place of business selling motorboats and/or sailboats, shall make an application to the Division of Motor Vehicles, who acts as an agent for the Division, in obtaining dealer numbers and registration decals. This rule to be continued as it is necessary for the identification of the person acting as a vessel dealer for motorboats and/or sailboats.

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

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

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and Recreation**  
**R651-214**  
 Temporary Registration

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE No.: 28633  
 FILED: 04/18/2006, 15:05

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-7(17)(d) states, "The board may adopt rules for the issuance and display of temporary registrations."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is designed to show how and when temporary registrations may be used

when dealing with motorboats or sailboats used on the waters in Utah. This rule should be continued as it provides a means of accountability for safety on Utah's waters.

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

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

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and Recreation**  
**R651-216**

Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE No.: 28634  
 FILED: 04/18/2006, 15:07

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-8(2) states that when a vessel is on the waters of Utah, between sunset and sunrise, it will display navigation lights. This rule follows the statute and is necessary for the safety of the recreating public in the state of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued for safety reasons, as it requires those recreating public, who use the waters of Utah to keep their boats visible

at all times with lights that can be seen from a distance of one to three miles.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-217  
Fire Extinguishers**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 28635  
FILED: 04/18/2006, 15:07

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-8(4) requires each vessel to have fire extinguishing equipment on board. Section 73-18-1 states the policy that promotes uniformity of laws for educational programs and promotion of safety for persons and property connected with boating in Utah. Public safety is of primary concern to Parks personnel, and while the public recreates in the state on Utah waters, they should be aware of safety requirements and equipment they need.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Utah State Parks holds public safety as a prime concern for the recreating public on Utah waters. This rule should continue as it helps educate the public and inform them of safety equipment and requirements they need to have a good experience while they visit.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-218  
Carburetor Backfire Flame Control**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 28636  
FILED: 04/18/2006, 15:08

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-8(5) states that vessels with inboard gasoline engines should be equipped with a carburetor backfire control device. The board may adopt rules conforming with the requirements of safety equipment mentioned in statute that govern specifications for the use of safety equipment.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This control device (carburetor backfire flame control) will disperse backfire and flame outside the vessel in a manner that the flame will not endanger the vessel or passengers. For safety reasons, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-219  
Additional Safety Equipment**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28637  
FILED: 04/18/2006, 15:08

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 17-18-8 explains what the Board may do regarding safety equipment on vessels. One of the conditions is to require additional safety equipment by this rule, as it summarizes the additional equipment and exemptions as well.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: All safety equipment is required for vessels to protect and promote well-being for the public using the waters of the state of Utah for recreational purposes. This rule includes additional safety concerns by addressing airboat requirements, bailing devices, sound devices, equipment condition, law enforcement vessels and any kind of exemption, such as sailboards, etc. This rule should be continued as it is a key in safety of recreators on waters in Utah.

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**Natural Resources, Parks and  
Recreation  
R651-220  
Registration and Numbering  
Exemptions**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28638  
FILED: 04/18/2006, 15:08

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-9(5) states that non-residents of Utah are exempt from registration and numbering requirements of this chapter if the board finds that the registration of motorboats or sailboats of this class will not materially aid in their identification. Since Parks (boating) is over the safety of waters in the state, and the parks board makes the rules governing park services, it is appropriate for Parks to put into rule any information that will help to make the recreating public aware of the rules and regulations for owning and operating vessels on the waters of Utah, and any exceptions to such rules. Rules are easier to access and understand as they cite the statute, but summarize and clearly explain each section in rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A motorboat or sailboat belonging to a class of vessels is exempted from registration by the board after the board finds that registration will not materially aid in identification, and therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-221  
Boat Livery Agreements**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28639  
FILED: 04/18/2006, 15:09

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-10(2) states that neither the owner of a boat livery nor his agent or employee may permit any vessel to depart from the premises of the boat livery unless the owner has equipped it as required under this chapter, and unless he has advised the lessee or renter of the vessel of all rules promulgated under this chapter which the lessee or renter must obey. It also states that it is required that unless the owner of a boat livery has advised the lessee or renter of the vessel of all rules promulgated under this chapter which the lessee or renter must obey. Rules set up to instruct or more clearly define a statute should be continued, and Rule R651-221 accomplishes that purpose.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule lists items to be carried on a vessel for the period of time for which the vessel is leased or rented such as lease or rental agreements and the information they contain. A check-off list must be kept of the required safety equipment. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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**Natural Resources, Parks and  
Recreation  
R651-226  
Regattas and Races**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28640  
FILED: 04/18/2006, 15:09

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-18-16 authorizes the Division to hold regattas, motorboat, or other boat races, marine parades, tournaments, or exhibitions on any waters of Utah. The board is allowed to adopt rules concerning the safety of vessels and persons either as observers or participants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Any time a race or regatta is held, there are safety issues involved. In order to keep the

race/regatta organized and safe, this rule should be continued as it creates a check list of authorized events and users that is used as an important tool to help keep participants and the recreating public safe and able to utilize the waters of Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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Natural Resources, Parks and  
Recreation

**R651-401**

Off-Highway Vehicle and Registration  
Stickers

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 28642  
FILED: 04/18/2006, 15:11

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule details the placement of registration stickers and OHV identification numbers for the State of Utah. Both are currently required by statute (Sections 41-22-3 and 41-22-3.1), and the Board is charged under statute with determining placement of those stickers and numbers

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Placement of numbers and stickers is very important, especially for immediate recognition of expired registration, or in the case of lost or stolen vehicles. It gives easy visual access to the numbers and registration by

officers in case of accident, and therefore, this rule be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

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Natural Resources, Parks and  
Recreation

**R651-405**

Off-Highway Implement of Husbandry  
Sticker Fee

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 28641  
FILED: 04/18/2006, 15:10

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule details the cost and placement of the OHV implement of Husbandry permit and sticker. The board is specifically instructed to make rules specifying permit cost and sticker placement by Section 41-22-5.5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: To continue to be in compliance with Section 41-22-5.5, this rule should be continued because it allows the Board to make rules specifying permit cost and sticker placement. The husbandry sticker rule gives special agricultural privileges that are not available to the general user. The Board needs to specify sticker placement so that law enforcement knows where to

look immediately and the public who have the stickers on their OHVs will not be stopped or hassled by law enforcement because the stickers are placed for easy view. The cost is a legislative demand.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
PARKS AND RECREATION  
Room 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006



Natural Resources, Parks and Recreation  
**R651-406**  
Off-Highway Vehicle Registration Fees

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE No.: 28643  
FILED: 04/18/2006, 15:12

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-22-8 allows the Board to establish fees which shall be paid and the amounts to be charged. There is a maximum prescribed in the code, however, the fee itself shall be established by the Board in rule, according to Section 41-22-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The cost of off-highway vehicle (OHV) registration is allowed and required by statute (Section 41-22-8) that states the board shall establish fees for registration of OHV vehicles. This cost defrays expenses for the OHV division of Parks and Recreation, and therefore, this rule should be continued.

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

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

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

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006



Natural Resources, Parks and Recreation  
**R651-801**  
Swimming Prohibited

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE No.: 28645  
FILED: 04/18/2006, 15:12

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-18b-1 states that the board is authorized to adopt, make, promulgate, amend, and repeal all rules and regulations necessary or convenient to promote safety in swimming, scuba diving, and related activities on any waters where public boating is permitted.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Utah State Parks and Recreation works with other agencies and owners or operators of Utah waters, to continue making them safe for the public. Placing signs and designating certain areas as "no swimming" areas is to help protect the public and resources as well, and therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

Natural Resources, Parks and  
Recreation  
**R651-802**  
Scuba Diving

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28646  
FILED: 04/18/2006, 15:12

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-18b-1 states that water safety is everyone's concern. Utah State Parks oversees the safety issues regarding the waters in Utah. The board is authorized to make, adopt, promulgate, amend, and repeal all rules and regulations necessary.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was set to help the recreating public deal with safety of equipment and sports, and it needs to be continued as it is a guideline for those who scuba dive in Utah.

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

NATURAL RESOURCES  
PARKS AND RECREATION  
Room 116

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Mary Tullius, Director

EFFECTIVE: 04/18/2006

Regents (Board Of), Administration  
**R765-649**  
Utah Higher Education Assistance  
Authority (UHEAA) Privacy Policy

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28676  
FILED: 04/25/2006, 13:25

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53B-12-101 authorizes the Utah Higher Education Assistance Authority (UHEAA) to act as the guarantor in Utah of student loans. These loans provide funds for students to attend an eligible institution of higher education. The business carried out by UHEAA involves processing applications for student loans which require personal identifying information. A privacy policy is needed to assure the safeguarding of such personal information.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during or since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Personal identifying information is received by UHEAA from each customer. The security of that information is necessary to protect and safeguard the identity of UHEAA's customers which include resident students and nonresident students and/or borrowers receiving student loan funds guaranteed by UHEAA. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
REGENTS (BOARD OF)  
ADMINISTRATION  
BOARD OF REGENTS BUILDING, THE GATEWAY  
60 SOUTH 400 WEST  
SALT LAKE CITY UT 84101-1284, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at [rcrossley@utahsbr.edu](mailto:rcrossley@utahsbr.edu)

AUTHORIZED BY: Mark H. Spencer, Associate Commissioner

EFFECTIVE: 04/25/2006



**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF EXPIRED RULES

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

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### Transportation

#### Motor Carrier, Ports of Entry

No. 28695 (filed 05/01/2006 at 8:20 a.m.): R912-8. Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah.

Enacted or Last Five-Year Review: 04/27/2001 (No. 23698, 5YR, filed 04/27/2001 at 11:19 a.m., published 05/15/2001)

Due Date: 04/27/2006

Expired Date: 04/28/2006

(DAR NOTE: The Department of Transportation accidentally let this rule expire. A proposed new rule to put Rule R912-8 back in place is under DAR No. 28703 in this issue.)

**End of the Notices of Expired Rules Section**

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Commerce

Occupational and Professional Licensing  
No. 28530 (AMD): R156-17b. Pharmacy Practice Act Rules.  
Published: March 15, 2006  
Effective: April 17, 2006

### Real Estate

No. 28494 (AMD): R162-10-1. Formal Adjudicative Proceedings.  
Published: March 1, 2006  
Effective: April 19, 2006

### Transportation

Program Development  
No. 28538 (NEW): R926-9. Establishment and Operation of HOT Lanes or Toll Lanes on State Highways.  
Published: March 15, 2006  
Effective: April 20, 2006

### Preconstruction

No. 28489 (R&R): R930-5. Establishment and Regulation of At-Grade Railroad Crossings.  
Published: February 15, 2006  
Effective: April 25, 2006

### Workforce Services

Employment Development  
No. 28537 (AMD): R986-200. Family Employment Program.  
Published: March 15, 2006  
Effective: May 1, 2006

**End of the Notices of Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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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, 2006, including notices of effective date received through May 1, 2006, the effective dates of which are no later than May 15, 2006. 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/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Administrative Services</b>					
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	28586	EMR	04/15/2006	2006-8/57
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	28384	AMD	01/25/2006	2005-24/2
<u>Fleet Operations</u>					
R27-1	Definitions	28474	5YR	01/30/2006	2006-4/33
R27-1	Definitions (5YR EXTENSION)	28279	NSC	01/30/2006	Not Printed
R27-1-2	Definitions	28368	NSC	01/01/2006	Not Printed
R27-2	Fleet Operations Adjudicative Proceedings	28475	5YR	01/30/2006	2006-4/33
R27-3	Vehicle Use Standards	28477	5YR	01/30/2006	2006-4/34
R27-3	Vehicle Use Standards (5YR EXTENSION)	28280	NSC	01/30/2006	Not Printed
R27-7	Safety and Loss Prevention of State Vehicles	28469	5YR	01/20/2006	2006-4/34

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Fleet Operations, Surplus Property</u>					
R28-2	Surplus Firearms	28496	5YR	02/07/2006	2006-5/47
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	28436	NSC	02/22/2006	Not Printed
R33-1-1	Definitions	28445	AMD	02/21/2006	2006-2/3
R33-2-101	Delegation of Authority of the Chief Procurement Officer	28437	NSC	02/22/2006	Not Printed
R33-3	Source Selection and Contract Formation	28447	AMD	02/21/2006	2006-2/5
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**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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