

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed October 02, 2010, 12:00 a.m. through October 15, 2010, 11:59 p.m.

Number 2010-21
November 01, 2010

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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EXECUTIVE DOCUMENTS

As part of his or her constitutional duties, the Governor periodically issues **EXECUTIVE DOCUMENTS** comprised of Executive Orders, Proclamations, and Declarations. "Executive Orders" set policy for the Executive Branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. "Proclamations" call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. "Declarations" designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution. All orders issued by the Governor not in conflict with existing laws have the full force and effect of law during a state of emergency when a copy of the order is filed with the Division of Administrative Rules. (See Section 63K-4-401).

Governor's Proclamation 2010/12/E: Calling the Fifty-Eighth Legislature into the Twelfth Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2010 General Session of the 58th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 58th Legislature into the Twelfth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 20th day of October, 2010, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2010 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 5th day of October 2010.

(State Seal)

Gary R. Herbert
Governor

Greg Bell
Lieutenant Governor

2010/12/E

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between October 02, 2010, 12:00 a.m., and October 15, 2010, 11:59 p.m. are included in this, the November 01, 2010 issue of the *Utah State Bulletin*.

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

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least December 1, 2010. The agency may accept comment beyond this date and will indicate 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 hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through March 1, 2011, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

PROPOSED RULES are governed by Section 63G-3-301; Rule R15-2; and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

**Commerce, Occupational and
Professional Licensing
R156-24b-502
Unprofessional Conduct**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 34133
FILED: 10/05/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In July 2010, the American Physical Therapy Association (APTA) House of Delegates amended the APTA Code of Ethics for the Physical Therapist, Guide for Professional Conduct, Standards of Ethical Conduct for the Physical Therapist Assistant, and Guide for Conduct of the Physical Therapist Assistant. The Division and the Physical Therapy Licensing Board reviewed the APTA's amendments to the documents and determined that new editions of the documents should be incorporated by reference in the Physical Therapy Practice Act Rule. The former editions of the documents have been expanded in the new editions to better delineate the ethical obligations of all physical therapists and physical therapist assistants. The new editions are more specific in clarification of intent, meaning, and application of foundational principles of ethics in the practice of physical therapy.

SUMMARY OF THE RULE OR CHANGE: Updated the APTA's Code of Ethics for the Physical Therapist from the June 2000 edition to the July 2010 edition. Updated the APTA's Guide for Professional Conduct from the January 2004 edition to the July 2010 edition. Updated the APTA's Standards of Ethical Conduct for the Physical Therapist Assistant from the June 2000 edition to the July 2010 edition. Updated the APTA's Guide for Conduct of the Physical Therapist Assistant from the February 2004 edition to the July 2010 edition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-24b-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Standards of Ethical Conduct for the Physical Therapist Assistant, published by American Physical Therapy Association, July 2010
- ◆ Updates Guide for Professional Conduct, published by American Physical Therapy Association, July 2010

- ◆ Updates Code of Ethics for the Physical Therapist, published by American Physical Therapy Association, July 2010
- ◆ Updates Guide for Conduct of the Physical Therapist Assistant, published by American Physical Therapy Association, July 2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Licensed physical therapists and physical therapist assistants may work in a few state agencies; however the proposed amendments would not directly affect the agency.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed physical therapists and licensed physical therapist assistants and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. The Division has determined no costs or savings are associated with the proposed amendments since the updated editions of the documents can be found on the American Physical Therapy Association's website.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. The Division has determined no costs or savings are associated with the proposed amendments since the updated editions of the documents can be found on the American Physical Therapy Association's website.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing adopts the current editions of various American Physical Therapy Association's Codes of Ethics. No fiscal impact to businesses is anticipated from this rule filing.

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:

♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-24b. Physical Therapy Practice Act Rule.

R156-24b-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) violating, as a physical therapist, any provision of the American Physical Therapy Association's Code of Ethics for the Physical Therapist, last amended [~~June 2000~~]July 2010, which is hereby adopted and incorporated by reference;

(2) violating, as a physical therapist, any provision of the American Physical Therapy Association's Guide for Professional Conduct, last amended [~~January 2004~~]July 2010, which is hereby adopted and incorporated by reference;

(3) not providing supervision, as a physical therapist, as set forth in Section R156-24b-503;

(4) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended [~~June 2000~~]July 2010, which is hereby adopted and incorporated by reference; and

(5) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended [~~February 2004~~]July 2010, which is hereby adopted and incorporated by reference.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

Date of Enactment or Last Substantive Amendment: [~~June 21,~~]2010

Notice of Continuation: January 30, 2007

Authorizing, and Implemented or Interpreted Law: 58-24b-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Community and Culture, Housing and
Community Development**

R199-8

**Permanent Community Impact Fund
Board Review and Approval of
Applications for Funding Assistance**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34135

FILED: 10/05/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is two fold: 1) allows the chairman to reschedule or cancel Community Impact Fund Board (CIB) meetings; and 2) moves a required submission date from December 1st to April 1st to more closely align the CIB program year with the state fiscal year.

SUMMARY OF THE RULE OR CHANGE: There are two proposed changes: 1) CIB meetings may be rescheduled or canceled by the chairman in addition to formal motion of the Board; and 2) the submission date of the Local Capital Improvement Lists is moved from December 1st to April 1st to align certain portions of the CIB's program year with the state fiscal year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-4-305

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no cost to the state budget associated with the proposed amendment. The proposed amendment deals with: 1) rescheduling or cancellation of CIB meetings by the chairman, as well as by motion of the board; and 2) the submission date for the Local Capital Improvement Lists is moved from December 1st to April 1st to align the CIB's program year with the state fiscal year.

♦ **LOCAL GOVERNMENTS:** There will be no cost to local governments associated with the proposed amendment. The proposed amendment deals with: 1) rescheduling or cancellation of CIB meetings by the chairman, as well as by motion of the board; and 2) the submission date for the Local Capital Improvement Lists is moved from December 1st to April 1st to align the CIB's program year with the state fiscal year.

♦ **SMALL BUSINESSES:** There will be no impacts from the proposed amendment on small businesses. Small businesses are ineligible for financial assistance from the CIB.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no impacts from the proposed amendment on persons other than small businesses, businesses, or local governmental entities. Such persons are ineligible for financial assistance from the CIB.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost of compliance associated with the proposed amendment. The proposed amendment deals with: 1) rescheduling or cancellation of CIB meetings by the chairman, as well as by motion of the board; and 2) the submission date for the Local Capital Improvement Lists is moved from December 1st to April 1st to align the CIB's program year with the state fiscal year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impacts from the proposed amendment on businesses. Businesses are ineligible for financial assistance from the CIB.

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 Burnett by phone at 801-538-8725, by FAX at 801-538-8888, or by Internet E-mail at kjburnett@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Michael Hansen, Interim Executive Director

R199. Community and Culture, Housing and Community Development.

R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.

R199-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" are "Project Review Meetings". The final meeting of each "Trimester" is the "Project Funding Meeting". Board meetings shall be held monthly on the 1st Thursday of each month,

unless rescheduled or cancelled by the chairman or by formal motion of the board. The Trimesters shall be as follows:

1. 1st Trimester: application deadline, June 1st; Project Review Meetings, July, August, September; Project Funding Meeting October.

2. 2nd Trimester: application deadline, October 1st; Project Review Meetings, November, December, January; Project Funding Meeting, February.

3. 3rd Trimester: application deadline, February 1st; Project Review Meetings, March April, May; Project Funding Meeting, June.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application, on or before the applicable deadline to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on one of the Trimester's upcoming "Project Review Meeting" agendas.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Priority List" for consideration at the next "Project Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants shall make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings". If an applicant or its representatives are not present to make a presentation, the board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of circumstances described in Subsection F.

E. Applications for funding assistance which have been placed on the "Priority List" will be considered at the "Project Funding Meeting" for that Trimester. At the "Project Funding Meeting" the Board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

3. authorize funding the application in the amount and terms as determined by the Board.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.

R199-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from DCC. This list shall be produced as a

cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to the Board, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or DCC's list, will not be funded by the Board, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than ~~December~~ April 1st of each year. The up- dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R199-8-5-C, or is not in the uniform format required in R199-8-5-E, all applications from the affected county area will be held by the Board's staff until a future Trimester pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until a future Trimester to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Subsection C.

J. Not withstanding Subsection I, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next Trimester.

KEY: grants

Date of Enactment or Last Substantive Amendment:
~~[November 18, 2008]~~2010

Notice of Continuation: September 13, 2007

Authorizing, and Implemented or Interpreted Law: 9-4-305

Education, Administration
R277-422
State Supported Voted Leeway, Local Board-Approved Leeway and Local Board Leeway for Reading Improvement Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34150

FILED: 10/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in the law in S.B. 2, 2010 Legislative Session, and clarify the funding formula for the K-3 Reading Achievement distribution to school districts and charter schools. The changes include adding a statement to clarify when an increase in a voted or board leeway will be effective in order for a school district to receive the state guarantee monies, and include adding language that clarifies what data elements to use for the state K-3 Reading Achievement fund distribution. (DAR NOTE: S.B. 2 (2010) is found at Chapter 399, Laws of Utah 2010, and was effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: The amendments provide new definitions, update Sections R277-422-3 and R277-422-4 to make the rule consistent with changes in state law, and provide new language to clarify the funding formula in Section R277-422-5.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(1)(e) and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendments to this rule simply comply with and make the rule consistent with 2010 legislation.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendments to this rule simply comply with and make the rule consistent with 2010 legislation.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public schools and public school districts and does not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments only affect public schools and public school districts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments to this rule simply comply with and make the rule consistent with 2010 legislation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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 by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-422. State Supported Voted Leeway, Local Board-Approved Leeway and Local Board Leeway for Reading Improvement Programs.

R277-422-1. Definitions.

A. "Ad valorem property tax" means a tax based on the assessed value of real estate or personal property.

B. "Board" means the Utah State Board of Education.

C. "Common Data Committee" means a committee established by the USOE responsible to determine consensus estimates for student enrollments and assessed valuations. The Committee includes representatives from the Governor's Office of Planning and Budget, the Legislative Fiscal Analyst's Office, and the Utah State Tax Commission.

D. "Local board leeway program" or "local board-approved leeway program" means a state-supported program in which a local board authorizes a property tax levy under Section 53A-17a-134 to cover a portion of the costs within the school district's general fund of the state-supported minimum school program. The levy may require voter approval under Section 53A-17a-134(4). These funds shall be spent for class size reduction or other purposes in a district if the local board determines that the average class size in the school district is not excessive.

E. "Local board" means the school board members elected to govern a school district.

F. "Local board leeway for reading improvement" means a local board leeway program in which a local board authorizes a property tax levy under Section 53A-17a-151 to cover a portion of the costs of a school district K-3 Reading Improvement Program established in Section 53A-17a-150.

G. "State-supported" means a formula-based state contribution of money to the voted leeway program and the board-approved leeway program as defined in Section 53A-17a-133(3) and Section 53A-17a-134(2).

H. "USOE" means the Utah State Office of Education.

I. "Voted leeway program" or "state-supported voted leeway program" means a state-supported program in which a property tax levy approved under Section 53A-17a-133 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

J. "Weighted pupil unit (WPU)" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-422-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to establish rules for school productivity and cost effectiveness measures, federal programs, school budget formats, and financial, statistical, and student accounting requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify requirements, timelines, and clarifications for the state-supported voted, local board-approved, and local board leeway for reading improvement programs.

R277-422-3. Requirements and Timelines for State-Supported Voted Leeway.

A. A local board may establish a state-supported voted leeway program following an election process that approves a special tax. The election process is provided for under Section 53A-17a-133(2).

B. Local boards which have approved voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted leeway equal to or less than the levy authorized by the election.

C. Effective January 1, 2007, a school district may budget an increased amount of ad valorem property tax revenue from a voted leeway in addition to revenue from new growth without required compliance with the advertisement requirements if the voted leeway is or was approved:

(1) on or after January 1, 2003;~~and~~

(2) within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax~~;~~and

(3) for a voted leeway approved or modified on or after January 1, 2009, the proposition submitted to the electors contains the following statement:

A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

D. Effective January 1, 2007, a school district may levy a tax rate without having to comply with the advertisement requirements of Section[s] 59-2-~~918 and~~919 if:

(1) the levy exceeds the certified tax rate as the result of a school district budgeting an increased amount of ad valorem property tax derived from a voted leeway;

(2) the voted leeway was approved on or after January 1, 2003;~~and~~

(3) the voted leeway was approved within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax revenue derived from the voted leeway~~;~~and

(4) for a voted leeway approved or modified on or after January 1, 2009, the proposition submitted to the electors contains the following statement:

A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

E. An election to consider adoption or modification of a state-approved voted leeway program is required.

F. A local board may continue an existing state-supported voted leeway program despite a majority vote opposing a modification of the state-supported voted leeway program.

G. If adoption of a voted leeway program is contingent upon an offset reduction of other local board tax levies, the local board shall allow the electors, in a election, to reconsider modifying or discontinuing the voted leeway program prior to a subsequent increase in the certified tax rate as set by the local board.

H. The state provides state guarantee funds to support the district state-supported voted leeway according to the amount specified in Section 53A-17a-133(3) and the local board-approved leeway according to the amount specified in Section 53A-17a-134(2).

I. State and local funds received by a local board under the state-supported voted leeway program are unrestricted revenue and may be budgeted and expended within the school district's general fund as authorized by the local board.

J. In order to receive state support for an initial ~~or subsequent increase in a~~ voted leeway tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial ~~or additional~~ voted leeway tax rate.

K. If a school district qualifies for state support the year prior to an increase in its existing voted leeway tax levy; and:

(1) ~~does not receive[s] voter approval for an increase [after December 1,]after June 30 of the previous fiscal year and before December 2 of the previous fiscal year;~~ and

(2) intends to levy the additional rate for the fiscal year starting the following July 1~~;~~; then

(3) the district shall only receive state support for the existing voted leeway tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1, and

(4) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

R277-422-4. Local Board-Approved Leeway Requirements and Timelines.

~~[In order to receive state support for an initial or subsequent increase in a board-approved leeway tax rate, a local board shall approve the tax rate no later than April 1 prior to the commencement of the fiscal year of implementation of that initial or additional board leeway tax rate.]The state support does not apply to a board-approved leeway in the first fiscal year the leeway is in effect unless the leeway was approved by voters under Sections 53A-17a-134(4) through (6) or an increased rate appears in the previous fiscal year.~~

R277-422-5. Optional Reading Improvement Levy Requirements and Timelines.

A. Local funds received by a local board under the local board leeway for reading improvement tax levy shall be used for funding the school district's K-3 Reading Improvement Program.

(1) This levy is in addition to any other tax levy or maximum tax rate; and

(2) does not require voter approval; and

(3) may be modified or terminated by a majority vote of the local board.

(4) The local board leeway for reading improvement is not a state-supported levy.

B. A local board shall establish its optional board leeway for reading improvement levy by June 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year.

C. If after 36 months of K-3 Reading Improvement Program operation, a school district fails to meet the goals stated in the district's plan for student reading proficiency improvement, as measured by gain scores, the local board shall at the next possible tax rate setting opportunity terminate its board leeway for reading improvement tax levy.

D. School districts that fail to reach their reading goals shall terminate their levy under Section 53A-17a-150(15). After a period of no less than one year, school districts that terminated their levy may present a new or revised K-3 Reading Initiative plan to the Board. Following approval by the Board, the local board may reinstate the levy at the next possible tax rate setting opportunity.

E. Funding

(1) The calculation for the K-3 Reading Achievement funding shall be consistent with Section 53A-17a-150.

(2) The following data shall be used for reading calculations:

(a) The most recent numbers of adjusted assessed valuations received by the USOE from the Common Data Committee;

(b) The previous year's tax collection rate;

(c) The previous year's number of Free and Reduced Price Meal applications; and

(d) The current fiscal year total number of WPU's received by LEAs for the basic school program.

R277-422-6. Tax Rate Setting Schedule.

Districts shall submit all approved tax levies to county auditors before the second Tuesday in August.

KEY: education, finance

Date of Enactment or Last Substantive Amendment: [November 9, 2006]2010

Notice of Continuation: October 5, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(f); 53A-1-401(3); 53A-17a-133; 53A-17a-134; 53A-17a-150; 53A-17a-151;|-59-2-918;| 59-2-919

Education, Administration
R277-470
Charter Schools

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 34151
FILED: 10/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide changes based on S.B. 188 and S.B. 55, 2010 Legislation Session. The amendments remove an enrollment cap to make the rule consistent with changes in state law. The amendments provide language allowing for authorization of charter schools by higher education institutions and language instructing a charter school to notify the Utah State Board of Education and the chartering entity of lawsuits filed against the charter school within 30 days of the filing of the lawsuit. The amendments also remove Section R277-470-6, Transfer Student Criteria, and Section R277-470-17, Charter School Building Subaccount, from the rule. New rules were created for deleted sections. (DAR NOTE: S.B. 188 (2010) is found at Chapter 162, Laws of Utah 2010, and was effective 05/10/2010. S.B. 55 (2010) is found at Chapter 353, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The amendments add, change, and delete definitions, provide changes to the language in Section R277-470-3 to make the rule consistent with state law, provide changes to Section R277-470-5 regarding notification to prospective students and parents, removes Section R277-470-6, adds language to Section R277-470-8 regarding charter school financial practices and training, adds language to renumbered Section R277-470-12 regarding charter school oversight and monitoring, removes Section R277-470-17, and adds language to the miscellaneous section of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1a-513 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Removing an enrollment cap, adding language that authorizes charter schools by higher education institutions, adding notification procedures, and removing two sections that have been superseded by new rules does not result in any costs or savings, but provides more flexibility for charter schools and higher education institutions.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Removing an enrollment cap, adding language that authorizes charter schools by higher education institutions, adding notification procedures, and removing two sections that have been superseded by new rules does not result in any costs or savings, but does provide more flexibility for charter schools and higher education institutions.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small business. This rule and the amendments apply to public schools and do not affect businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments apply to public schools and higher education institutions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Removing an enrollment cap, adding language that authorizes charter schools by higher education institutions, adding notification procedures, and removing two sections that have been superseded by new rules does not result in any costs or savings, but provides more flexibility for charter schools and higher education institutions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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 by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-470. Charter Schools.

R277-470-1. Definitions.

A. "Board" means the Utah State Board of Education.

~~B. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).~~

~~[B]C. "Charter schools" means schools acknowledged as charter schools by [local boards of education]chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.~~

~~[E]D. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.~~

~~[D]E. "Charter school deficiencies" means the following information:~~

~~(1) a charter school is not satisfying financial obligations as required by Section 53A-1a-505 in the charter school's written contractual agreement;~~

~~(2) a charter school is not providing required documentation following reasonable warning;~~

~~(3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.~~

~~[E]E. "Charter school founding member" or "founding member" means an individual who had a significant role in the initial development of the charter school up until the first instructional day of school, the first year of operation, as submitted in writing to the State Charter School Board the first day of operation.~~

~~[F]G. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school similar to a local board of education.~~

~~[G]H. "Days" means calendar days, unless specifically designated.~~

~~[H]I. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school at a single location.~~

~~[J]J. "Local education agency (LEA)" means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state, or other entities as designated by the Board, and includes any entity with state-wide responsibility for directly operating and maintaining facilities for providing public education.~~

~~[J]K. "Northwest [Association of Accredited Schools (NAAS)]Accreditation Commission accreditation" means the formal process for evaluation and approval under the Standards for Accreditation of the Northwest [Association of Accredited~~

~~Schools]Accreditation Commission or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist. Accreditation ensures that the credits/diploma a student earns is the result of a quality educational experience. The purpose of accreditation is to ensure excellence in education by holding schools accountable to rigorous standards and a process of continued improvement.~~

~~[K]L. "Neighborhood or traditional school" for purposes of this rule, means a public, non-charter school.~~

~~[L]M. "New charter school" as provided in Section 53A-21-401(5)(d) means any charter school through the first day of its second year with students, or a satellite school that requires a new location/campus.~~

~~[M]N. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.~~

~~[N]O. "On-going funds" means funds that are appropriated annually by the Legislature with the expectation that the funds shall continue to be appropriated annually.~~

~~[O]P. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.~~

~~[P]Q. "State Charter School Board" means the board designated in Section 53A-1a-501.5.~~

~~[Q. "Subaccount" means the Charter School Building Subaccount consisting of funds provided under 53A-21-401(5)(b).~~

~~R. "Subaccount Committee" means the committee established by the Superintendent under Section 53A-21-401(6).~~

~~[S]R. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.~~

~~[F]S. "Urgent facility need" as provided in Section 53A-21-401(5)(d) means an unexpected exigency that affects the health and safety of students such as:~~

~~(1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or~~

~~(2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health or public school code.~~

~~[U]T. "USOE" means the Utah State Office of Education.~~

~~[V]U. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of distributing revenue on a uniform basis for each pupil.~~

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes

timelines as required by law to provide for adequate training for beginning charter schools.

R277-470-3. Maximum Authorized Charter School Students.

A. Local school boards may not approve district-chartered schools unless they notify the State Charter School Board by August 15 two years prior to opening of proposed district-chartered schools and estimated numbers of students.

B. The Board, in consultation with the State Charter School Board and chartering entities, may approve schools, expansions and satellite charter schools for the total number of students authorized under 53A-1a-502.5

C. ~~[District chartered schools submitting applications shall be considered with all new charters.]~~ The number of students requested from all chartering entities shall be considered as students are allocated by the State Charter School Board and approved by the Board.

R277-470-4. Charter School Orientation and Training.

A. All charter school applicants shall attend orientation/training sessions designated by the State Charter School Board.

B. Orientation meetings shall be scheduled at least quarterly and be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend orientation/training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training and orientation sessions may receive priority for approval from the State Charter School Board and the Board.

D. Orientation/training sessions shall provide information including:

- (1) charter school implementation requirements;
- (2) charter school statutory and Board requirements;
- (3) charter school financial and data management requirements;
- (4) charter school legal requirements;
- (5) federal requirements for charter school funding; and
- (6) other items as determined by the State Charter School Board.

R277-470-5. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All charter schools opening or expanding by at least ten percent of overall enrollment or adding one or more grade levels shall notify all families consistent with the schools' outreach plans described in the charter agreements of:

(1) a new or expanding charter school's purpose, focus and governance structure, including names, qualifications, and contact information of governing board members;

(2) the number of new students that will be admitted into the school by grade;

(3) the proposed school calendar for the charter school including at a minimum the first and last days of school, scheduled holidays, pre-scheduled professional development days (no student attendance), and other scheduled non-school days;

(4) the charter school's timelines for acceptance or rejection of new students consistent with Section 53A-1a-506.5;

(5) ~~the requirement and availability of a State-approved [student-]charter school student application [(beginning with the 2008-09 school year)];~~

(6) procedures for transferring to or from a charter school, together with applicable timelines; and

(7) ~~provide]provisions~~ for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103.

B. Charter schools shall provide written notice of the information in R277-470-5A consistent with the school's outreach plan and at least 180 days before the proposed opening day of school.

C. Charter schools shall have an operative and readily accessible electronic website providing information required under R277-470-5A in place. The completed charter school website shall be provided to the State Charter School Board at least 180 days prior to the proposed opening day of school. The State Charter School Board shall require new charter schools to have websites that may be reviewed by the State Charter School Board prior to the schools posting the websites publicly.

~~**[R277-470-6. Transfer Student Criteria:**~~

~~A. Charter schools shall allow students to transfer from one charter school to another and enroll students only consistent with Sections 53A-1a-506.5(2) through (6), including timelines.~~

~~B. Charter schools shall provide notice to a withdrawing student's school of residence consistent with Section 53A-1a-506.5(5) and using USOE designated transfer forms.~~

~~C. Both charter schools and neighborhood schools shall enroll students and exchange student information consistent with 53A-1a-506.5(2)(c) and 53A-11-504 and using USOE designated transfer forms.~~

~~D. Both charter schools and neighborhood schools shall have policies that provide procedures for properly excluding students and notifying students and parents under 53A-11-903 and 53A-11-904.~~

~~E. Neither neighborhood schools nor charter schools may discourage students from attending schools of choice in violation of state or federal law.~~

~~F. Neither charter schools nor neighborhood schools shall be required to enroll students who have been properly excluded from public schools under 53A-11-903 and 53A-11-904.~~

~~**[R277-470-7]6. Timelines - Charter School Starting Date.**~~

~~A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.~~

~~B. A local or state-chartered school shall be approved by November 30, two years prior to the school year it intends to serve students in order to be eligible for state funds.~~

~~C. A local or state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open. Each state-chartered school shall submit any lease, lease-purchase agreement, or other contract or agreement relating to the charter school's facilities or financing the charter~~

school facilities to its chartering entity for review and advice prior to the charter school entering into the lease, agreement, or contract, consistent with Section 53A-1a-507(9).

D. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

E. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53A-1a-511.

F. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-470-[8]7. Remediating Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school financial deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.

B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board in absence of the State Charter School Board action may:

(1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;

(2) immediately terminate the flow of state funds; or

(3) recommend cessation of federal funding to the school;

(4) take immediate or subsequent corrective action with employees who are responsible for financial deficiencies; or

(5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remediating a charter school's financial deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-470-[9]8. Charter School Financial Practices and Training.

A. Charter school business and financial staff shall attend USOE required business meetings for charter schools.

B. Local charter school board members and directors shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial

personnel/staff if charter schools supply current staff information and addresses and indicate the desire to attend.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-3-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools shall comply with the Utah State Procurement Code, Title 63G, Chapter 6.

[F]G. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

[G]H. Charter schools shall comply with R277-471, Oversight of School Inspections.

R277-470-[10]9. Procedures and Timelines for Schools Chartered by Local Boards to Convert to Board-Chartered Schools.

A. A charter school chartered initially by a local board of education shall notify the local board that it will seek Board approval for a state conversion to its charter with adequate notice for the local board to make staffing decisions.

B. A locally chartered school shall operate successfully for at least nine months prior to applying for conversion to a Board chartered school.

C. A charter school shall submit an application to convert from a locally chartered school to a Board chartered school to the State Charter School Board; the State Charter School Board shall provide an application for schools seeking to convert.

D. The application may require some or all of the following, depending upon the school's longevity, successful operation and existing documentation at the USOE:

(1) current board members and founding members;

(2) audit and financial records:

(a) record of state payments received;

(b) record of contributions received by the school from inception to date;

(c) test scores, including calendar of testing;

(d) current employees: identifying assignments and licensing status, if applicable;

(e) student lists, including home addresses or uniform student identifiers for current students;

(f) school calendar for previous school year and prospective school year;

(g) course offerings, if applicable;

(h) affidavits, signed by all board members providing or certifying (documentation may be required):

(i) the school's nondiscrimination toward students and employees;

(ii) the school's compliance with all state and federal laws;

(iii) that all information on application provided is complete and accurate;

(iv) that school meets/complies with all health and safety codes/laws;

(v) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;

(vi) that the school is operating consistent with the school's charter;

(vii) the school's Annual Yearly Progress status under No Child Left Behind;

(viii) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;

(ix) that the previous local board of education supports or does not support conversion;

E. Applications for conversion from locally chartered to Board chartered shall be considered by the State Charter School Board within 60 days of submission of complete applications, including all required documentation.

F. Following approval by the State Charter School Board, proposals of charter schools seeking conversion approval shall be submitted to the Board for review.

G. If an applicant is not accepted for conversion, the State Charter School Board shall provide adequate information for the charter school to review and revise its proposal and reapply no sooner than nine months from the previous conversion application.

H. The Board shall consider the conversion application within 45 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

I. Final approval or denial of conversion is final administrative action by the Board.

R277-470-[H]10. Charter Schools and NCLB Funds.

A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-11.

B. To obtain its allocation of NCLB formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October upload of the Data Clearinghouse.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-[I]11. Charter School Parental Involvement.

A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.

B. Charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the

charter school that is designated to make decisions about the School LAND Trust funds consistent with R277-477-3E.

R277-470-[J]12. Charter School Oversight and Monitoring.

A. The State Charter School Board shall provide direct oversight to the state's [b]Board chartered schools, including:

(1) requiring that all charter schools shall be members of and accredited by [NAAS]Northwest Accreditation Commission;

(2) annual review of student achievement indicators for all schools, disaggregated for various student subgroups;

(3) quarterly review of summary financial records and disbursements and student enrollment;

(4) annual review conducted through site visits or random audits of personnel matters such as employee licensure and evaluations;

(5) regular review of other matters specific to effective charter school operations as determined by the USOE charter school staff;

(6) audits and investigations of claims of fraud or misuse of public assets or funds; and

(7) requiring that charter schools are in compliance with their charter agreement, as maintained by the USOE. It is presumed that the charter agreement maintained by the USOE is the final, official and complete agreement.

B. The Board retains the right to review or repeal charter school authorization based upon factors that may include:

(1) financial deficiencies or irregularities; or

(2) persistently low student achievement inconsistent with comparable schools; or

(3) failure of the charter school to comply with state law, Board rules, or directives; or

(4) failure to comply with currently approved charter commitments.

C. All charter schools shall amend their charters by January 1, 2011 to include the following statement:

To the extent that any charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted and enforced to comply with such law or rule and all other provisions of the charter school shall remain in full force and effect.

D. A charter school shall notify the Board and the chartering entity of any and all lawsuits filed against the charter school within 30 days of the filing of the lawsuit.

[D]E. District charter school authorizers shall:

(1) visit a charter school at least once during its first year of operation;

(2) visit a charter school as determined in the review process; and

(3) provide written reports to the charter schools after the visits.

R277-470-[K]13. Approved Charter School Expansion.

A. The following shall apply to requests for expansion for approved and operating charter schools:

(1) The school satisfies all requirements of state law and Board rule.

(2) The approved Charter Agreement shall provide for an expansion consistent with the request; or

(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:

(a) the school district in which the charter school is located has been notified of the proposed expansion in the same manner as required in Section 53A-1a-505(1);

(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;

(c) the school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(d) students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(e) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. The charter school governing board shall file a request with the State Charter School Board for an expansion no later than April 1 two years prior to the date of the proposed implementation of the expansion.

C. Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under 53A-1a-502.5(1).

R277-470-[15]14. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school no later than April 1 two years prior to the date of the proposed implementation of the satellite if the charter school fully satisfies the following:

(1) The school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(2) The school has operated successfully for at least three years;

(3) Students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

(5) The school shall be financially stable; there have been no repeat findings of deficiencies on required outside audits for at least two consecutive years;

(6) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite site school;

(7) The school has had an audit by Charter School Section staff regarding performance of the current charter agreement, contractual agreements, and financial records; and

(8) The school provides any additional information or documentation requested by the Charter School Section staff or the Board.

(9) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

(1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of state law and Board rule;

(2) A detailed explanation of the governance structure for the satellite school, including appointed or elected representation on the governing board, parental involvement and professional staff involvement in implementing the educational plan;

(3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;

(4) A detailed financial plan for the satellite school;

(5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;

(a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-470-7C;

(b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.

(6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);

(7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the charter school satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held accountable for its own AYP report and disaggregated financial data and reports.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

D. A charter school may not apply for more than three satellite locations.

R277-470-[16]15. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

(1) School districts may not incur increased costs or displace eligible students to transport charter school students.

(2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.

(3) A charter school student shall board and leave the bus at the same stop each day.

(4) Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

[R277-470-17. Charter School Building Subaccount.

A. The Board shall establish or reauthorize a Subaccount Committee consistent with 53A-21-401(6) by July 15 annually.

(1) The Superintendent, on behalf of the Board, may annually accept nominations of individuals who meet the qualifications of 53A-21-401(6)(a) from interested parties, including individuals nominating themselves, before June 1. The Board shall appoint five Subaccount Committee members; the Committee shall consider the Governor's nomination as one of the five appointees and the State Charter School Board's nomination as one of the five appointees.

(2) Per Section 53A-21-401(6)(a), the governor shall nominate one individual who meets the qualifications of 53A-21-401(6)(a) before the Board appoints Committee members.

(3) The State Charter School Board shall nominate one individual who meets the qualifications of Section 53A-21-401(6)(a) before June 1 consistent with R277-470-17A(1).

(4) Subaccount Committee members shall be appointed by the Board to terms that do not exceed three years.

(a) In order to stagger terms, terms of appointed Committee members shall be determined by the Board, upon the effective date of this rule.

(b) Future Committee members shall serve three year terms.

(c) The USOE Charter School Director or designee shall be a non-voting Subaccount Committee member.

B. The Subaccount Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Sections 53A-21-401(6)(b) and (8).

C. The Subaccount Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful in making final recommendations to the Superintendent, the State Charter School Board and the Board. The Subaccount Committee shall also establish terms and conditions for loan repayment, consistent with Section 53A-21-401(6)(b).

D. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Subaccount Committee and repayment schedule of the loan designated by the Subaccount Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-21-401(5)(e) and the purpose of the approved charter;

(d) agrees to any and all audits or financial reviews ordered by the Subaccount Committee or the Board;

(e) agrees to any and all inspections or reviews ordered by the Subaccount Committee or the Board;

(f) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

E. The Subaccount Committee shall not make recommendations to the Superintendent, the State Charter School Board or the Board until the committee receives complete and satisfactory information from the applicant and the Subaccount Committee has reached a majority recommendation.

F. The submission of intentionally false, incomplete or inaccurate information from a loan applicant shall result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

G. The Superintendent, in consultation with USOE and State Charter Board staff, shall review recommendations from the Subaccount Committee and make final recommendations to the Board.

H. The Superintendent shall submit final recommendations from the Subaccount Committee to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Subaccount Committee.

I. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Subaccount Committee.

J. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

[R277-470-16]16. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.

B. Only the following State Charter School Board administrative decisions or recommendations may be appealed to the Board:

- (1) recommendation for termination of a charter;
- (2) recommendation for denial of expansions or satellite schools;
- (3) recommendation for denial of local charter board proposed changes to approved charters;
- (4) recommendation for denial or withholding of funds from local charter boards; and
- (5) recommendation for denial of a charter.

C. No other issues may be appealed.

D. Appeals procedures and timelines

(1) The State Charter School Board shall, upon taking any of the administrative actions under R277-470-17A:

(a) provide written notice of denial to the charter school or approved charter school;

(b) provide written notice of appeal rights and timelines to the local charter board chair or authorized agent; and

(c) post information about the appeals process on the State Charter School Board website and provide training to prospective charter school board members and staff regarding the appeals procedure.

(2) A local charter school board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action or recommendation.

(3) The Superintendent shall, in consultation with the Board chair, designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board staff and State Charter School Board.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and

(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in her sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

R277-470-[19]17. Miscellaneous Provisions.

A. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.

(1) Underserved student populations may include low income students, students with disabilities, English Language Learners (ELL), or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

B. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety, or welfare of students consistent with 53A-1a-510(3).

(1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with 62A-4a-403 and 53A-11-605(4).

(2) Additionally, Individuals may report threats to the health, safety, or welfare of students to the local charter board.

(a) reports shall be made in writing;

(b) reports shall be timely;

(c) anonymous reports shall not be reviewed further.

(3) Local charter boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Local charter boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

C. The Board shall have authority for final approval of all charter schools. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.

KEY: education, charter schools

Date of Enactment or Last Substantive Amendment: [May-12, 2010]

Notice of Continuation: October 10, 2008

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-515; 53A-1a-505; 53A-1a-513; 53A-1a-502; 53A-1-401(3); 53A-1a-510; 53A-1a-509; 41-6-115; 53A-1a-506; 53A-21-401; 53A-1a-519; 53A-1a-520; 53A-1a-501.5; 53A-1-301; 53A-1a-502.5; 53A-1a-506.5; 53A-12-103; 53A-11-504; 53A-11-903; 53A-11-904; 53A-1a-511; 53A-1-302 and 303; 53A-17a;109; 53-8-211; 62A-4a-403; 53A-11-605

**Health, Epidemiology And Laboratory
Services, Environmental Services**

R392-200

**Design, Construction, Operation,
Sanitation, and Safety of Schools**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34144

FILED: 10/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment removes the phrase "liberally construed" from the rule language as directed by the legislature.

SUMMARY OF THE RULE OR CHANGE: The phrase "liberally construed" has been removed from Section R392-200-1.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings as the removal of this phrase does not change the requirements of the rule, or demand specific action by regulators.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings as the requirements of the rule have not changed, or demand specific action by local government.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings as the requirements of the rule have not changed.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings as the requirements of the rule have not changed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated with this change of rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removal of this ambiguous phrase is expected to have no fiscal impact.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.**R392-200. Design, Construction, Operation, Sanitation, and Safety of Schools.****R392-200-1. General Provisions.**

A. Purpose. This rule [~~shall be liberally construed and applied to~~] provides minimum requirements for the protection of the health and safety of the school occupants and the general public.

B. Application. The provisions of this rule are applicable to the design, construction, operation, maintenance, safety, health, and sanitation of schools, their grounds, and accessory structures thereto.

C. Construction or Remodeling of School Buildings

1. On and after the effective date of this rule, all school buildings or appurtenances that are constructed or extensively remodeled shall be designed, constructed, remodeled, and maintained in accordance with the standards set forth in rule.

2. Architectural plans for new or for an extensive renovation of an existing facility shall be submitted to the Department or its designated representative for review and approval prior to construction. Any changes required for approval shall be included into the plans and adhered to in the construction of the facility.

3. Existing schools shall be maintained in accordance to the health and sanitary standards established in this rule.

D. Definitions

1. "Approved" means acceptable to the Director or local health officer based on his determination that there is conformance with appropriate standards and good public health practice.

2. "Department" means the Utah Department of Health or its authorized agents.

3. "Director" means the Executive Director of the Utah Department of Health, or designated representative.

4. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area, whether or not enclosing a building or set of buildings, and its associated premises that is used for the education of individuals and that may be owned and/or operated by public or private agencies.

5. "Hot Water" means water heated to a temperature of not less than 120 degrees Fahrenheit (49 degrees Celsius) at the outlet.

6. "Instructor" means teacher, teaching assistant, teacher's aid, or any other such individual responsible for a particular class.

7. "Local Health Officer" means the health officer of any municipal, county, or district health department, or his designated representative.

8. "School" shall mean any public or private educational institution or facility owned and/or operated by federal, state, or local governments, religious organizations, private agencies, or individuals.

9. "Solid Wastes" means any discarded organic matter, refuse, rubbish, hazardous waste, special waste, garbage, trash, and other waste materials resulting from the operation of the facility.

10. "Toxic" means any substance that may have an adverse physiological effect on a person or persons.

11. "Wastewater" means sewage or water-carried wastes, and shall include, but not be limited to, the discharges from all plumbing fixtures or facilities.

KEY: public health, schools
Date of Enactment or Last Substantive Amendment:
~~[September 10, 1998]~~2010
Notice of Continuation: April 5, 2007
Authorizing, and Implemented or Interpreted Law: 26-15-2

Health, Health Care Financing **R410-14** Administrative Hearing Procedures

NOTICE OF PROPOSED RULE
 (Repeal and Reenact)
 DAR FILE NO.: 34147
 FILED: 10/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to update and clarify administrative hearing procedures for the Division of Medicaid and Health Financing (DMHF).

SUMMARY OF THE RULE OR CHANGE: In contrast to the repealed rule, the reenacted rule adds definitions and updates hearing procedures to include requirements for managed care plan hearings, home and community-based waiver hearings, restriction hearings, and eligibility hearings. It also specifies the conditions under which DMHF may grant a hearing and specifies the "no issue of fact" criteria that DMHF utilizes. It further clarifies the factors upon which the presiding officer bases his final decision and includes a section that lists the requirements for amending an administrative order. In addition, the reenacted rule details the rules of discovery for formal adjudicative proceedings and includes a section that clarifies the policy for interpreter services. Unlike the reenacted rule, the repealed rule contains nurse aide training and competency evaluation requirements, hearing requirements for the Utah Medical Assistance Program that no longer exists, and specifies that DMHF may delay a hearing if an individual does not correctly submit the necessary paperwork for a formal proceeding. All other requirements of the repealed rule are placed in the reenacted rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this rule only updates and clarifies administrative hearing procedures for DMHF.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.

- ◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this rule only updates and clarifies administrative hearing procedures for DMHF.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid clients and providers because this rule only updates and clarifies administrative hearing procedures for DMHF.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid client or provider because this rule only updates and clarifies administrative hearing procedures for DMHF.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Clarification and further explanation of the administrative process should assist businesses that work with DMHF to understand their due process rights and may eliminate unnecessary costs.

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

HEALTH
 HEALTH CARE FINANCING
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R410. Health, Health Care Financing.
[R410-14. Administrative Hearing Procedures.
R410-14-1. Introduction and Authority.

~~_____ (1) Division policy is to resolve disputes at the lowest level. This rule is not meant to foreclose the Division's preference for informal resolutions through open discussion and negotiation between the Division and aggrieved persons.~~

~~_____ (2) This rule is authorized by Section 1902(a)(3) SSA, 42 CFR 431, Subpart E, and Sections 26-1-24, 26-18-2.3, and 63G-4-102.~~

R410-14-2. Definitions.

~~_____ (1) The definitions in R414-1 and Section 63G-4-103 apply to this rule.~~

- _____ (2) In addition, as used in this rule:
- _____ (a) "Action" means a denial, termination, suspension, or reduction of Medicaid or UMAP covered services regarding an applicant or a recipient; or a reduction or denial of reimbursement for services.
- _____ (b) "Aggrieved Person" means any applicant, recipient, or provider adversely affected by any action or inaction of DHCF.
- _____ (c) "Applicability" means a determination of whether a statute, rule, or order should be applied, and if so, how the law as stated should be applied to specific facts and circumstances.
- _____ (d) "Date of Action" means the date on which a denial of eligibility, or termination, suspension, or reduction of Medicaid or UMAP covered services becomes effective, regarding an applicant or recipient; or regarding a provider, the date on which:
- _____ (i) a reduction or denial of reimbursement or a sanction becomes effective;
- _____ (ii) notice is given of licensing deficiencies; or
- _____ (iii) notice is given that DHCF will not accept a Plan of Correction of survey deficiencies required by licensing.
- _____ (e) "Order" means an agency action of particular applicability, issued by the presiding officer, that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons.

R410-14-3. Administrative Hearing Procedures.

- _____ (1) All Title XIX (Medicaid) or Utah Medical Assistance Program (UMAP) applicants, recipients, or providers aggrieved by any action or inaction of the Department of Health (DOH), Division of Health Care Financing (DHCF), may file a written request for agency action pursuant to 63G-4-201 and in accordance with this rule. All proceedings before DHCF, except as otherwise set forth, shall be conducted as a formal hearing. DHCF conducts hearings on many subjects including the following:
- _____ (a) PASARR Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all residents and potential residents of a nursing facility (whether Medicaid eligible or otherwise) who disagree with the pre-admission screening and appropriateness of placement decision made by DHCF, shall be given an opportunity for a hearing upon written request. All PASARR hearings as set forth above shall be conducted as a formal hearing in accordance with R410-14-11.
- _____ (b) Nurse Aide Registry Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all nurse aides employed by a certified nursing facility who have successfully completed and passed the nurse aide training and competency evaluation program, or both, shall be identified on a nurse aide registry. In addition, such nurse aides shall be subject to investigation upon allegations of resident abuse, neglect, or misappropriation of resident property. DHCF or its designated agents is responsible to investigate complaints. Before a substantiated claim can be entered into the registry, the nurse aide, upon written request, is entitled to a hearing to be conducted by DHCF or its designated agents. All nurse aide registry hearings as set forth above shall be conducted as formal hearings in accordance with R410-14-11.

- _____ (c) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility/Mentally Retarded (ICF/MR) Hearings. As provided by 42 CFR 431, Subpart D, DHCF must, for any SNF, ICF and ICF/MR, provide for appeals procedures that, as a minimum, satisfy the requirements of 42 CFR 431.153 through 431.155. Hearings shall be conducted as a formal hearing in accordance with R410-14-11.

- _____ (d) Informal Hearings. "Residents' Rights Hearings." As provided by Section 1919 of Title XIX of the Social Security Act, all residents of a nursing facility (whether Medicaid eligible or otherwise) have certain specific "residents' rights" and may be aggrieved by action or inaction of a nursing facility in the meeting of those rights. Responsibility for enforcing nursing home compliance with the residents' rights requirement rests with DHCF. All "resident rights" hearings shall be conducted as an informal hearing.

- _____ (2) A hearing is not required and will not be granted to an applicant, recipient, or provider if the sole issue is a federal or state law or policy requiring an automatic change in covered services adversely affecting some or all applicants, recipients, or providers (42 CFR 431.220).

- _____ (3) EXCEPT AS SPECIFIED HEREIN, R410-14 ONLY APPLIES TO TITLE XIX MEDICAID OR UMAP RECIPIENTS OR PROVIDERS. This rule does not apply to initial applications for medical assistance. A Medicaid or UMAP applicant who has been denied eligibility for medical assistance through the local Office of the Department of Workforce Services (DWS) must contact the Department of Workforce Services for a hearing.

- _____ (4) If eligibility for a non-medical assistance program in addition to Medicaid or UMAP is at issue, the Medicaid or UMAP eligibility determination hearing shall be conducted by the Department of Workforce Services (DWS) through the Office of Administrative Hearings. Requests for such hearings shall be sent to the address in R410-14-3(3). All hearings shall be conducted according to DWS hearing rules. DWS shall propose a recommended decision concerning the medical assistance issue only and shall submit it to the Executive Director of DOH or his designated representative for review and final agency order.

- _____ (5) DWS shall forward all requests for hearings to consider eligibility for medical assistance only to DHCF. A formal hearing in accordance with the hearing procedures herein shall be conducted by DHCF.

R410-14-4. Availability of Hearing.

- _____ If there is no disputed issue of fact, the presiding officer may make a determination without an evidentiary hearing.

R410-14-5. Notice.

- _____ (1) DHCF shall give advance written notice to each individual who is affected by an adverse action taken by DHCF, in accordance with R410-14-8.
- _____ (2) A notice under this section must contain:
- _____ (a) a statement of the action DHCF intends to take;
- _____ (b) the date the intended action takes effect;
- _____ (c) the reasons for the intended action;
- _____ (d) the specific regulations that support, or the change in federal or state law or policy, that requires the action;

~~(c) the aggrieved person's right to request a formal hearing before DHCF, when applicable, and the method by which such hearing may be obtained from DHCF;~~

~~(f) a statement that the aggrieved person may represent himself or use legal counsel, relative, friend or other spokesman at the formal hearing; and;~~

~~(g) if applicable, an explanation of the circumstances under which Medicaid or UMAP coverage or reimbursement will be continued if a formal hearing is timely requested.~~

~~(3) DHCF shall mail advance notice at least ten calendar days before the date of the intended action EXCEPT as noted below:~~

~~(a) DHCF may mail a notice not later than the date of action if:~~

~~(i) DHCF has factual information confirming the death of a recipient or provider;~~

~~(ii) DHCF receives a clear, written statement signed by a recipient or provider that:~~

~~(A) he no longer wishes services or reimbursement, or~~

~~(B) he gives information that requires termination or reduction of services or reimbursement and understands that this must be the result of supplying that information;~~

~~(iii) the recipient has been admitted to an institution where he is ineligible under the State Plan for further services;~~

~~(iv) the recipient's or provider's whereabouts are unknown and the Post Office returns DHCF mail directed to him indicating no forwarding address;~~

~~(v) DHCF establishes the fact that the recipient has been accepted for Medicaid/UMAP services by another local jurisdiction, State, Territory or Commonwealth;~~

~~(vi) a change in the level of medical care is prescribed by the recipient's physician; or~~

~~(vii) a termination, suspension, or reduction of Medicaid or UMAP covered services or reimbursement is necessitated by an imminent peril to the public health, safety, or welfare.~~

~~(b) DHCF may shorten the period of advance mailed notice to five days before the date of action if:~~

~~(i) DHCF has facts indicating that action should be taken because of probable fraud by the applicant or recipient or provider; and~~

~~(ii) the facts have been verified, by affidavit, if possible.~~

R410-14-6. Request for Formal Hearing.

~~(1) DHCF shall conduct formal hearings on all "medical assistance only" issues:~~

~~(2) An aggrieved person may request a formal hearing within the following deadlines, depending upon the type of request:~~

~~(a) An aggrieved Medicaid provider may request a formal hearing within 30 calendar days from the date written notice is issued or mailed, whichever is later.~~

~~(b) An aggrieved Medicaid or UMAP applicant or recipient may request a formal hearing regarding eligibility for "medical assistance only" within 90 calendar days from the date written notice is issued or mailed, whichever is later.~~

~~(c) An aggrieved UMAP or Medicaid applicant or recipient may request a formal hearing regarding scope of service within 30 calendar days from the date written notice is issued or mailed, whichever is later, by DHCF of an action or intended action.~~

~~(3) Failure to submit a timely request for a formal hearing constitutes a waiver of a person's due process rights. A request for a hearing shall be in writing, shall be dated, and shall explain the reasons for which the hearing is requested. An aggrieved person may use the hearing request form which is attached to all negative eligibility action notices, which is entitled "Requests for Hearing/Agency Action."~~

~~(4) The address for submitting a "Request for Hearing/Agency Action" for: (a) Medicaid or UMAP providers; and (b) Medicaid or UMAP eligibility hearings or scope of service hearings is as follows:~~

~~Division of Health Care Financing~~

~~Office of Hearings and Appeals~~

~~Box 142901~~

~~Salt Lake City, Utah 84114-2901~~

~~(5) DHCF shall schedule a hearing or begin negotiations in the matter in writing within 30 days of the date of issuance of the request for formal hearing or agency action.~~

~~(6) DOH or DHCF may deny or dismiss a request for a formal hearing if:~~

~~(a) The aggrieved person withdraws the request in writing;~~

~~(b) The aggrieved person fails to appear at or participate in a scheduled hearing or prehearing without good cause;~~

~~(c) The aggrieved person prolongs the hearing process without good cause;~~

~~(d) The aggrieved person's whereabouts is unknown as indicated by return of agency mail without forwarding address;~~

~~(e) The provider fails to allow DHCF access to its records pursuant to R410-14-18(2)(b);~~

~~(f) A party does not respond, when requested, to any correspondence made in connection with the matter by the presiding officer, such as failure to provide relevant medical records.~~

R410-14-7. Reinstatement/Continuation of Services.

~~(1) DHCF may reinstate services for recipients or suspend any adverse action for providers if the aggrieved person requests a formal hearing not more than ten calendar days after the date of action.~~

~~(2) DHCF must reinstate or continue services for recipients or suspend adverse actions for providers until a decision is rendered after a formal hearing if:~~

~~(a) adverse action is taken without giving the ten day advance mailed notice to a recipient or provider in all circumstances where such advance notice is required;~~

~~(b) in those circumstances where advance notice is not required, the aggrieved person requests a formal hearing within ten calendar days following the date the adverse action notice is mailed; or~~

~~(c) DHCF determines that the action resulted from other than the application of federal or state law or policy.~~

R410-14-8. Notice of Formal Hearing.

~~DHCF shall notify the aggrieved person or his attorney, in writing, of the date, time, and place of the hearing. Notice shall be mailed not less than ten calendar days before the scheduled date of the formal hearing.~~

R410-14-9. Form of Papers:

- ~~_____ (1) All papers to be filed in a formal proceeding shall:~~
- ~~_____ (a) Be typewritten or legibly hand-written;~~
 - ~~_____ (b) Bear a caption clearly showing the title of the hearing;~~
 - ~~_____ (c) Bear the docket number, if any;~~
 - ~~_____ (d) Be dated and signed by the party or his authorized representative;~~
 - ~~_____ (e) Contain the address and telephone number of the party or his representative, if any; and~~
 - ~~_____ (f) Consist of an original and two copies filed with DHCF.~~
- ~~_____ (2) Hearings may be delayed until the requirements of this section are met.~~

R410-14-10. Service:

- ~~_____ (1) The party filing papers and documents shall serve them upon all parties to the formal proceeding. Proof of service shall be filed with DHCF.~~
- ~~_____ (2) Service shall be personally delivered or by mail, properly addressed with postage prepaid, one copy to each entitled party. If a party is represented, service upon the representative is sufficient service upon the party.~~
- ~~_____ (3) Proof of service shall be by certificate, affidavit, or acknowledgment.~~
- ~~_____ (4) Wherever notice by DHCF is required, notification shall be effective upon the date of first class mailing to the party's residence or business address.~~
- ~~_____ (5) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.~~

R410-14-11. Intervention:

- ~~_____ As permitted by Section 63G-4-207, a person may intervene if:~~
- ~~_____ (1) The person petitions for leave to intervene at least seven days before the scheduled hearing, unless otherwise permitted by the presiding officer.~~
 - ~~_____ (2) The petition must contain a clear and concise statement of the direct and substantial interest of the person seeking leave to intervene in the hearing.~~
 - ~~_____ (3) Persons seeking affirmative relief shall state the basis of such relief.~~
 - ~~_____ (4) Other parties to the hearing have an opportunity to support or oppose intervention in a manner permitted by the presiding officer.~~
 - ~~_____ (5) The presiding officer may grant leave to intervene subject to such reasonable conditions as he may prescribe. An intervenor may be dismissed from the hearing if it appears that he has no direct or substantial interest in the hearing.~~

R410-14-12. Conduct of Hearing:

- ~~_____ (1) Hearings shall be conducted according to 63G-4-206, and as described in R414-14.~~
- ~~_____ (2) Formal hearings shall be conducted by an impartial presiding officer who is appointed by DOH. The presiding officer shall be empowered with such authority as granted by Sections 63G-4-102 through 503, except as may be limited by R410-14. No presiding officer shall have been directly involved in the initial determination of the action in question.~~

~~_____ (3) The presiding officer may elect to hold a pre-hearing meeting for any of the following reasons:~~

- ~~_____ (a) to formulate or simplify the issues;~~
- ~~_____ (b) to obtain admissions of fact and documents, that will avoid unnecessary proof;~~
- ~~_____ (c) to arrange for the exchange of proposed exhibits or prepared expert testimony;~~
- ~~_____ (d) to outline procedures to be followed at the formal hearing; or~~
- ~~_____ (e) to agree to other matters that may expedite the orderly conduct of the hearing, or a settlement.~~
- ~~_____ (f) Agreements reached during the conference shall be recorded, or the parties may enter into a written stipulation, or agree to a statement made on the record by the presiding officer.~~

~~_____ (4) All formal hearings may be conducted only after adequate written notice of the hearing has been served on all parties setting forth the time, date and place of the hearing.~~

~~_____ (5) Testimony shall be taken under oath or affirmation administered by the presiding officer.~~

~~_____ (6) Each party has the right to:~~

- ~~_____ (a) call and examine parties and witnesses;~~
- ~~_____ (b) introduce exhibits;~~
- ~~_____ (c) question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination;~~
- ~~_____ (d) impeach any witness regardless of which party first called him to testify; and~~
- ~~_____ (e) rebut the evidence against him.~~

~~_____ (7) The rules of evidence as applied in civil actions in the courts of this state shall be generally followed in the hearings. Any relevant evidence may be admitted. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient by itself to support a finding unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.~~

~~_____ (8) The presiding officer may question any party or witness and may admit any evidence he believes is relevant or material.~~

~~_____ (9) The presiding officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. The presiding officer may determine the order in which evidence will be received.~~

~~_____ (10) The presiding officer shall maintain order, and may recess the hearing for the time necessary to regain order, if a person engages in disrespectful, disorderly, or contumacious conduct. The presiding officer may take measures to remove a person, including participants, from the hearing, if necessary, to maintain order. If a participant shows persistent disregard on matters of order and procedure, the presiding officer may enter a sanction on the person, including: restricting the person's participation, striking pleadings or evidence, or issuing an order of default.~~

~~_____ (11) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to the agency.~~

~~_____ (12) The moving party has the burden of proving by a preponderance of the evidence whatever facts it must establish to sustain its position.~~

R410-14-13. Ex Parte Communications.

~~(1) Except as otherwise provided below, ex parte communications are prohibited.~~

~~(2) The presiding officer shall decline to listen to or accept any communication offered in violation of this rule and shall explain to the offeror that any communication received off the record and in violation of this rule must be made a part of the record and furnished to all parties.~~

~~(3) This rule shall not apply to communications concerning status of the hearing and uncontested procedural matters.~~

R410-14-14. Continuances or Further Hearings.

~~(1) The presiding officer may continue a formal hearing to another time or place, or order a further hearing on his own motion or upon the showing of good cause, at the request of any party.~~

~~(2) If the presiding officer determines that additional evidence is necessary for the proper determination of the case, he may, at his discretion, continue the hearing to a later date and order the party to produce additional evidence, or close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.~~

~~(3) Written notice of the time and place of a continued or further hearing shall be given in accordance with R410-14-7, except when a continuance is ordered during a hearing and adequate oral notice is given.~~

R410-14-15. Record.

~~A complete record of all formal hearings is made by the presiding officer. The recording shall be transcribed if requested by a party to the hearing. The requesting party shall pay the costs of transcription and copying. DHCF shall maintain the complete record of the hearing in a secure area. The record is the sole property of DHCF. DHCF or its designated agent shall retain recordings of formal hearings for a period of one year. Written records and documents shall be retained for a period not to exceed three years.~~

R410-14-16. Proposed Decision and Final Agency Review.

~~(1) At the conclusion of the formal hearing, the presiding officer shall take the matter under advisement and shall submit to the Executive Director of DOH or his designated representative a recommended decision, based on the evidence and testimony introduced in the proceeding.~~

~~(2) The proposed decision shall be in writing and shall contain findings of fact and conclusions of law.~~

~~(3) The Executive Director of DOH or his designated representative may:~~

~~(a) adopt the proposed decision, or any portion of the decision;~~

~~(b) reject the proposed decision, or any portion of the decision, and make his own independent determination based upon the record; or~~

~~(c) remand the matter to the presiding officer to take additional evidence, and the presiding officer thereafter shall submit~~

~~to the Executive Director of DOH or his designated representative a new recommended decision; or~~

~~(d) send the proposed decision to the parties for comments prior to taking any of the above actions.~~

~~(4) The decision of the Executive Director or his designated representative constitutes final administrative action, and is subject to judicial review in accordance with the procedures set forth in R410-14-17.~~

~~(5) The aggrieved person or his representative shall be notified of the final administrative action and the aggrieved person's right to judicial review of the action.~~

R410-14-17. Agency Review.

~~An aggrieved person may move for reconsideration of DHCF's final administrative action, in accordance with Sections 63G-4-301 and 302. A person may seek review of a DWS final agency order concerning eligibility for medical assistance by filing a written request for review with DHCF in accordance with Section 63G-4-301.~~

R410-14-18. Judicial Review.

~~Judicial review shall be obtained according to Sections 63G-4-102 and 63G-4-401 through 405 and Section 78-2a-3.~~

R410-14-19. Discovery.

~~(1) The Utah Rules of Civil Procedure are inapplicable to these proceedings and no formal discovery except as set forth in this rule is permitted.~~

~~(2) Unless otherwise limited by order of the presiding officer, the scope of discovery in formal adjudicative proceedings is as follows:~~

~~(a) DHCF shall be permitted to review all records pertinent to the hearing that are in the custody or control of the applicant or recipient and the applicant or recipient's health care providers. DHCF shall give at least three days written notice to the custodian of such document(s).~~

~~(b) A provider shall allow DHCF to inspect its records that are pertinent to the hearing. Inspection shall be made at the provider's business office during regular working hours and after at least three days written notice.~~

~~(3) Upon written request at least three days prior to the hearing, the aggrieved person or his representative shall be permitted to examine all DHCF's documents and records for the formal hearing. The aggrieved party may request the Medicaid Management Information System (MMIS) claim file upon 15 calendar days request.~~

~~(4) The presiding officer may order the taking of interrogatories and depositions, set appropriate time frames, assess sanctions for non-compliance, and assess the expense to the requesting party if the presiding officer determines such to be proper.~~

~~(5) The presiding officer may permit the filing of Requests for Admission, set appropriate time frames for responses, and assess sanctions for non-compliance.~~

~~(6) The presiding officer may order at DHCF expense a medical assessment in order to obtain information necessary for a fair decision. This information is subject to confidentiality requirements and shall be made a part of the formal hearing record.~~

R410-14-20. Witnesses and Subpoenas.

~~(1) A party shall arrange for the presence of his witnesses at the hearing.~~

~~(2) A subpoena to compel the attendance of a witness or the production of evidence may be issued by the presiding officer, upon written request by a party and a sufficient showing of need.~~

~~(3) A subpoena may also be issued by the presiding officer on his own motion.~~

~~(4) An application for subpoena for the production by a witness of books, papers, correspondence, memoranda, or other records shall be made by affidavit to the presiding officer. The application must include:~~

~~(a) the name and address of the person or entity upon whom the subpoena is to be served;~~

~~(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or tangible things not privileged, that the applicant seeks;~~

~~(c) a showing that the material requested is relevant to the issue involved in the hearing; and~~

~~(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.~~

~~(5) The applicant shall arrange to serve all subpoenas that the presiding officer issues to him. A copy of the affidavit presented to the presiding officer shall be served with the subpoena.~~

~~(6) Except for employees of DOH, witnesses subpoenaed for any hearing are entitled to appropriate fees and mileage. The witness shall file a written demand for the fees with the presiding officer not later than ten days after the date the witness appeared at the hearing.~~

~~(7) The presiding officer may issue an order of default against any party who fails to obey an order entered by the presiding officer.~~

R410-14-21. Declaratory Orders.

~~(1) Declaratory orders shall be issued according to R380-1, and as described in R410-14-20.~~

~~(2) Copies of approved forms to petition for declaratory orders are available from DHCF upon request.~~

~~(3) If DHCF has not issued a declaratory order within 60 days after receipt of the request, the petition is denied.~~

~~(4) DHCF shall retain the request for declaratory ruling in its records.~~

~~(5) DHCF shall not issue a declaratory order if an adjudicative proceeding involving the same parties and issue is pending before the Agency or the courts.]~~

R410-14. Administrative Hearing Procedures.**R410-14-1. Introduction and Authority.**

(1) This rule outlines administrative hearing procedures for the Division of Medicaid and Health Financing.

(2) This rule is authorized by Section 26-1-24, Section 63G-4-102, 42 U.S.C. 1396(a)(3), and 42 CFR 431, Subpart E.

R410-14-2. Definitions.

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means a denial, termination, suspension, or reduction of medical assistance for a recipient, or a reduction or denial of reimbursement for services.

(b) "Aggrieved Person" means any recipient or provider who is adversely affected by any action or inaction of the Division of Medicaid and Health Financing (DMHF), the Department of Human Services (DHS), the Department of Workforce Services (DWS), or any managed health care plan.

(c) "Ex Parte" communications mean direct or indirect communication in connection with an issue of fact or law between the presiding officer and one party only.

(d) "Managed Care Organization" means a health maintenance organization or prepaid mental health plan that contracts with DMHF to provide medical or mental health services to medical assistance recipients.

(e) A "medical record" is a record that contains medical data of a client.

(f) "Order" means an agency action that the presiding officer issues to determine the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but not a class of persons.

R410-14-3. Administrative Hearing Procedures.

(1) An aggrieved person may file a written request for agency action pursuant to Section 63G-4-201, and in accordance with this rule. If a medical issue is in dispute, each request must include supporting medical documentation. DMHF will schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

(2) DMHF shall conduct the following as formal adjudicative proceedings in accordance with Section R410-14-12:

(a) Preadmission Screening Resident Review (PASRR) Hearings. Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that DMHF or its designated agent makes, has the right to a hearing upon request.

(b) Nurse Aide Registry Hearings. Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect or misappropriation of resident property. DMHF or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that DMHF or its designated agent conducts before a substantiated claim can be entered into the registry.

(c) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility for the Mentally Retarded (ICF/MR) Hearings. 42 CFR 431, Subpart D, requires DMHF to provide SNF, ICF and ICF/MR appeal procedures that satisfy the requirements of 42 CFR 431.153 and 431.154.

(d) Managed Care Plan Hearings. Pursuant to 42 U.S.C. 1396u-2, federal law requires Medicaid and Children's Health Insurance Program managed care organizations to have an internal appeals process for Medicaid enrollees or providers acting on the enrollee's behalf to challenge the denial of payment for medical assistance. The written managed care enrollment information must explain this procedure. DMHF requires exhaustion of the managed care appeals process before an enrollee or provider may request a hearing. An enrollee or provider who submits a hearing request on behalf of another enrollee must include a copy of the final written notice of the appeal decision. An enrollee or provider who acts on

the enrollee's behalf must also request a hearing within 30 days from the date of the final written notice of the appeal decision.

(i) A managed care provider has no right to a hearing with DMHF, except if the provider is acting solely on behalf of the client. Nevertheless, if there is an issue that could affect the status of DMHF as the single state agency, DMHF may hold a hearing at its own discretion.

(e) Home and Community-Based Waiver Hearings. 42 CFR 431, Subpart E, requires DMHF to provide appeal procedures that satisfy the requirements 42 CFR 431.200 through 431.250.

(i) For home and community-based waivers in which the Division of Services for People with Disabilities (DSPD) is the designated operating agency and the appeal is based on whether the person meets the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the eligibility determination of the operating agency is final. If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the operating agency shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the DHS hearing process in accordance with Section R539-3-8. The DSPD decision is dispositive for purposes of this subsection. DMHF shall sustain the determination and there is no right to further agency review.

(3) DMHF shall conduct the following as informal adjudicative proceedings:

(a) Resident Right Hearings. Pursuant to 42 U.S.C. 1396n, the state may restrict access to providers that it designates for services for a reasonable amount of time. The state may also restrict Medicaid recipients that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. DMHF shall give the recipient notice and opportunity for an informal hearing before imposing restrictions.

(4) Eligibility Hearings. If eligibility for medical assistance is at issue, DWS shall conduct the hearing.

R410-14-4. Availability of Hearing.

(1) The presiding officer may not grant a hearing if the issue is a state or federal law, a policy requiring an automatic change in eligibility for medical assistance, or covered services that adversely affect the aggrieved person.

(2) DMHF will only conduct a hearing in connection with the agency action if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer shall deny a request for an evidentiary hearing and issue a recommended decision without a hearing.

(3) There is no issue of fact if:

(a) the agency presents facts that establish the agency's right to take the action or obtain the relief sought in the proceeding; and

(b) the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(4) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(5) DMHF may not grant a hearing to a managed care provider to dispute the terms of a contract or the payment of a claim.

R410-14-5. Notice.

(1) DMHF, DHS, DWS, and a managed health care plan shall provide written notice to each individual or provider affected by an adverse action in accordance with 42 CFR 431.211, 213 and 214. Adverse actions to a recipient affect:

(a) eligibility for assistance;

(b) scope of service; or

(c) payment of a claim.

(2) Adverse actions to a provider include:

(a) a reduction in payment, denial of reimbursement and claim of payment; and

(b) a sanction that becomes effective.

(3) A notice must contain:

(a) a statement of the action DMHF, DHS, DWS, or a managed health care plan intends to take;

(b) the date the intended action becomes effective;

(c) the reasons for the intended action; and

(d) the specific regulations that support the action, or the change in federal law, state law or DMHF policy, which requires the action;

(e) the right and procedure to request a formal hearing before DMHF or an informal hearing before DHS or DWS;

(f) the right to represent oneself, the right to legal counsel, or the right to use another representative at the formal hearing; and

(g) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue pending the outcome of the proceeding, if DMHF receives a hearing request within ten calendar days from the date of the notice of agency action.

(4) DMHF shall mail the notice at least ten calendar days before the date of the intended action except:

(a) DMHF may mail a notice not later than the date of action in accordance with 42 CFR 431.213.

(5) DMHF may shorten the period of advance notice to five days before the date of action if:

(a) DMHF has facts that indicate it must take action due to probable fraud by the recipient or provider; and

(b) the facts have been verified by affidavit.

R410-14-6. Request for Formal Hearing.

(1) DMHF shall conduct formal hearings for all medical assistance issues except if a recipient or provider requests an informal hearing that meets the criteria set forth in Section 63G-4-202.

(2) A recipient may request a formal hearing within the following deadlines:

(a) A medical assistance provider or recipient may request a formal hearing within 30 calendar days from the date that DMHF sends written notice of its intended action.

(b) A medical assistance recipient may request an informal hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date that DMHF sends written notice of its intended action.

(c) A medical assistance recipient must request a formal hearing regarding scope of service within 30 calendar days from the date that DMHF issues written notice of its intended action.

(3) Failure to submit a timely request for a formal hearing constitutes a waiver of an individual's due process rights. The

request must explain why the recipient is seeking agency relief, and the recipient must submit the request on the "Request for Hearing/Agency Action" form. The recipient must then mail the form to the address that the agency specifies in the notice of agency action.

(4) DMHF considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, DMHF considers the request to be filed on the date that DMHF receives it, unless the sender can demonstrate through competent evidence that he mailed it before the date of receipt.

(5) DMHF shall schedule a pre-hearing, or begin negotiations in writing within 30 calendar days from the date it receives the request for a formal hearing or agency action.

(6) DMHF may deny or dismiss a request for a hearing if the aggrieved person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a prehearing conference;

(c) fails to appear or participate in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the presiding officer or fails to provide medical records that the agency requests.

(7) An aggrieved person must inform DMHF of his current address and telephone number.

R410-14-7. Reinstatement and Continuation of Services.

(1) DMHF may reinstate services for a recipient or suspend any adverse action for a provider if the aggrieved person requests a formal hearing not more than ten calendar days after the date of action.

(2) DMHF shall reinstate or continue services for a recipient or suspend adverse actions for a provider until it renders a decision after a formal hearing if:

(a) DMHF takes adverse action without giving ten-day notice to a recipient or a provider when advance notice is required;

(b) advance notice is not required and the aggrieved person requests a formal hearing within ten calendar days after the date that DMHF mails the adverse action notice; or

(c) DMHF determines that the action resulted from other than the application of federal law, state law or DMHF policy.

R410-14-8. Notice of Formal Hearing.

DMHF shall notify the aggrieved person or the person's representative in writing of the date, time and place of the formal hearing, and shall mail the notice at least ten calendar days before the date of the hearing unless all parties agree to an alternative time frame.

R410-14-9. Form of Papers.

(1) Any document that an individual or party files with DMHF in a formal proceeding must:

(a) be typed or legibly written;

(b) bear a caption that clearly shows the title of the hearing;

(c) bear the docket number, if any;

(d) be dated and signed by the party or the party's authorized representative;

(e) contain the address and telephone number of the party or the party's authorized representative; and

(f) consist of an original and two copies.

R410-14-10. Service.

(1) The individual or party that files a document with DMHF shall serve the document upon all other parties and file a proof of service with DMHF.

(2) Each party must receive one copy by personal delivery or mail to the proper address with postage prepaid. If an individual represents a party, service upon the individual is sufficient.

(3) The Utah Rules of Civil Procedure require a certificate, affidavit or acknowledgment to serve as a proof of service.

(4) If DMHF must provide notice of a formal hearing, the notice becomes effective on the date of first class mailing to the party's address of record.

(5) The Utah Rules of Civil Procedure permit other methods of service in addition to the methods set forth in this section.

R410-14-11. Intervention.

(1) Section 63G-4-207 permits a person to intervene in a formal adjudicative proceeding if:

(a) the person petitions to intervene at least seven calendar days before the scheduled hearing, or as the presiding officer permits;

(b) the petition contains a clear and concise statement of the direct and substantial interest of the person seeking to intervene;

(c) the person seeking affirmative relief states the basis for relief;

(d) the presiding officer has discretion to permit other parties an opportunity to support or oppose intervention; and

(e) the presiding officer has discretion to grant leave to intervene.

(2) The presiding officer may dismiss an intervenor if the intervenor has no direct or substantial interest in the hearing.

R410-14-12. Conduct of Hearing.

(1) DMHF shall conduct hearings in accordance with Section 63G-4-206.

(2) DMHF shall appoint an impartial presiding officer to conduct formal hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) The presiding officer may elect to hold a prehearing meeting to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the formal hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(4) DMHF shall record agreements that the parties reach during the prehearing or the parties may enter into a written stipulation.

(5) DMHF may conduct all formal hearings only after adequate written notice of the hearing has been served on all parties setting forth the date, time and place of the hearing.

(6) The presiding officer shall take testimony under oath or affirmation.

(7) Each party has the right to:

(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;

(b) introduce exhibits;

(c) impeach any witness regardless of which party first called the witness to testify; and

(d) rebut the evidence against the party.

(8) DMHF shall follow the rules of evidence as applied in Utah civil actions. Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence. Hearsay, however, is not sufficient by itself to support a finding, unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial and unduly repetitious evidence.

(9) The presiding officer may question any party or witness.

(10) The presiding officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The presiding officer may determine the order in which he receives the evidence.

(11) The presiding officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The presiding officer may remove any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:

(a) restrict the person's participation in the hearing;

(b) strike pleadings or evidence; or

(c) issue an order of default.

(12) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the presiding officer at no cost to the agency.

(13) DMHF has the burden of proof in any proceeding that it initiates through a notice of agency action. A party that seeks action from DMHF, however, has the burden of proof in any proceeding that it initiates through a request for agency action.

(14) When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.

R410-14-13. Ex Parte Communications.

(1) Ex parte communications are prohibited.

(2) The presiding officer may not listen to or accept any ex parte communication. If a party attempts ex parte communication, the presiding officer shall inform the offeror that any communication that the presiding officer receives off the record, will become part of the record and furnished to all parties.

(3) Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

R410-14-14. Continuances or Further Hearings.

(1) The presiding officer, on the officer's own motion or at the request of a party showing good cause, may:

(a) continue the hearing to another time or place; or

(b) order a further hearing.

(2) If the presiding officer determines that additional evidence is necessary for the proper determination of the case, the officer may:

(a) continue the hearing to a later date and order the party to produce additional evidence; or

(b) close the hearing and hold the record open to receive additional documentary evidence.

(3) The presiding officer shall provide to all parties any evidence that he receives and each party has the opportunity to rebut that evidence.

(4) The presiding officer shall provide written notice of the time and place of a continued or further hearing, except when the officer orders a continuance during a hearing and all parties receive oral notice.

R410-14-15. Record.

(1) The presiding officer shall make a complete record of all formal hearings. A hearing record is the sole property of DMHF and DMHF shall maintain the complete record in a secure area.

(2) If a party requests a copy of the recording of a formal hearing, that party may transcribe the recording.

(3) DMHF or its designated agent shall retain recordings of formal hearings for a period of one year.

(4) DMHF shall retain written records of formal hearings for a period of three years pending further litigation.

R410-14-16. Proposed Decision and Final Agency Review.

(1) At the conclusion of the formal hearing, the presiding officer shall take the matter under advisement and submit a recommended decision to the DMHF Director or the director's designee. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

(2) The recommended decision must contain findings of fact and conclusions of law.

(3) The DMHF Director or the director's designee may:

(a) adopt the recommended decision or any portion of the decision;

(b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or

(c) remand the matter to the presiding officer to take additional evidence, and the presiding officer thereafter shall submit to the DMHF director or the director's designee a new recommended decision.

(4) The director or designee's decision constitutes final administrative action and is subject to judicial review.

(5) DMHF shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.

(6) The parties shall comply with a final decision from the director reversing the agency's decision within ten calendar days.

(7) The Executive Director shall review all recommended decisions to determine approval of medical assistance for an organ transplant. The Executive Director's decision constitutes final administrative action and is subject to judicial review.

R410-14-17. Amending Administrative Orders.

(1) DMHF may amend an order if the presiding officer determines that the agency made a clerical mistake.

(2) DMHF shall notify the respondent and the petitioner of its intent to amend the order by serving a notice of agency action signed by the presiding officer.

(3) The DMHF Director shall review the amended order and he or his designee shall issue a final agency amended order.

(4) DMHF shall provide a copy of the final amended order to the respondent and the petitioner.

R410-14-18. Agency Review.

An aggrieved person may move for reconsideration of DMHF's final administrative action in accordance with Sections 63G-4-301 and 302. A person may seek review of a DWS final agency order concerning eligibility for medical assistance by filing a written request for review with DMHF in accordance with Section 63G-4-301.

R410-14-19. Judicial Review.

An aggrieved person may obtain judicial review in accordance with Section 63G-4-102 and 63G-4-401 through 405.

R410-14-20. Discovery.

(1) The Utah Rules of Civil Procedure do not apply to formal adjudicative proceedings and formal discovery is permitted only as set forth in this section. Each party shall diligently pursue discovery and full disclosure to prevent delay. A party that conducts discovery under this section shall maintain a mailing certificate.

(2) The scope of discovery in formal adjudicative proceedings, unless otherwise limited by order of the presiding officer, is as follows:

(a) DMHF may review all pertinent records in the custody of the recipient after three days of written notice.

(b) DMHF may review all pertinent records at the health care provider's place of business during regular working hours and after three days of written notice.

(c) The recipient shall submit medical records with the hearing request whenever possible. Necessary medical records include:

(i) the provision of each service and activity billed to the program;

(ii) the first and last name of the petitioner;

(iii) the reason for performing the service or activity that includes the petitioner's complaint or symptoms;

(iv) the recipient's medical history;

(v) examination findings;

(vi) diagnostic test results;

(vii) the goal or need that the plan of care identifies; and

(viii) the observer's assessment, clinical impression or diagnosis that includes the date of observation and identity of the observer.

(d) The medical records must demonstrate that the service is:

(i) medically necessary;

(ii) consistent with the diagnosis of the petitioner's condition; and

(iii) consistent with professionally recognized standards of care.

(3) DMHF shall allow the aggrieved person or the person's representative to examine all DMHF documents and records for the hearing upon written request to DMHF at least three days before the hearing.

(4) An individual may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(5) The presiding officer may permit the filing of formal discovery or take depositions only upon a clear showing of necessity that takes into account the nature and scope of the dispute. If the presiding officer allows formal discovery, he shall set appropriate time frames for response and assess sanctions for non-compliance.

(6) The presiding officer may order a medical assessment at the expense of DMHF to obtain information. This information is subject to HIPAA confidentiality requirements and is part of the hearing record.

(7) Each party shall file a signed pretrial disclosure form at least ten calendar days before the scheduled hearing that identifies:

(a) fact witnesses;

(b) expert witnesses;

(c) exhibits and reports the parties intend to offer into evidence at the hearing;

(d) petitioner's specific benefit or relief claimed;

(e) respondent's specific defense;

(f) an estimate of the time necessary to present the party's case; and

(g) any other issues the parties intend to request the presiding officer to adjudicate.

(8) Each party shall supplement the pretrial disclosure form with information that becomes available after filing the original form. The pretrial disclosure form does not replace other discovery that is allowed under this section.

R410-14-21. Witnesses and Subpoenas.

(1) A party shall arrange for a witness to be present at a hearing.

(2) The presiding officer may issue a subpoena to compel the attendance of a witness or the production of evidence upon written request by a party that demonstrates a sufficient need.

(3) The presiding officer may issue a subpoena on his own motion.

(4) A party may file an affidavit that requests the presiding officer to subpoena a witness to produce books, papers, correspondence, memoranda, or other records. The affidavit must include:

(a) the name and address of the person or entity upon whom the subpoena is to be served;

(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or other tangible items that the applicant seeks;

(c) material that is relevant to the issue of the hearing; and

(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.

(5) A party shall arrange to serve any subpoena that the presiding officer issues on its behalf, and shall serve a copy of the affidavit that it presents to the presiding officer.

(6) Except for employees of DOH, DHS, DWS, or a managed care plan, a witness that the presiding officer subpoenas to attend a hearing is entitled to appropriate fees and mileage. The witness shall file a written demand for fees with the presiding officer within ten calendar days from the date that he appears at the hearing.

(7) The presiding officer may issue an order of default against any party that fails to obey an order entered by the presiding officer.

R410-14-22. Declaratory Orders.

(1) DMHF shall issue declaratory orders in accordance with Rule R380-1.

(2) Copies of approved forms to petition for declaratory orders are available from DMHF upon request.

(3) If DMHF does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.

(4) DMHF shall retain the request for declaratory ruling in its records.

(5) DMHF may not issue a declaratory order if an adjudicative proceeding that involves the same parties and issue is pending before the agency or the courts.

R410-14-23. Interpreters.

(1) If a party notifies DMHF that it needs an interpreter, DMHF shall arrange for an interpreter at no cost to the party.

(2) The party may arrange for an interpreter to be present at the hearing only if the presiding officer can verify that the interpreter is at least 18 years of age, and fluent in English and the language of the person who testifies.

(3) The presiding officer shall instruct the interpreter to interpret word for word, and not to summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter must swear under oath to truthfully and accurately translate all statements, questions and answers.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~June 9, 2008~~ **2010**

Notice of Continuation: October 29, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-24; 26-1-5; ~~26-18-2.3;~~ 63G-4-102

Human Services, Administration,
Administrative Services, Licensing
R501-15
Therapeutic Schools

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 34140

FILED: 10/06/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule needs to be re-established and continued in order to establish basic health standards for therapeutic schools. (DAR NOTE: The rule expired on 10/06/2010; see the expiration notice under DAR No. 34139 in this issue, November 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule establishes basic health and safety standards for therapeutic schools; procedures and standards for permitting a therapeutic school to provide services to an adult in the same facility and under the same conditions as a child; and minimum administration and financial requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62-A-101 and Section 62-A-106

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule clarifies practice but it will not increase the workload already being done.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase or savings to local government. This rule clarifies practice on work already being done.
- ◆ **SMALL BUSINESSES:** There will be no increase or savings to small businesses because they will not be affected by this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost or savings to any persons or entities. This rule clarifies practice on work already being done.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons have no cost associated with implementing this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no cost or savings associated with implementing this rule.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
195 N 1950 W
FIRST FLOOR
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Vilma Mosier by phone at 801-538-4041, by FAX at 801-538-4553, or by Internet E-mail at vmosier@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-15. Therapeutic Schools.

R501-15-1. Authority and Purpose.

1. This rule is authorized under Section 62A-2-106.
2. This rule establishes:
 - a. basic health and safety standards for therapeutic schools;
 - b. procedures and standards for permitting a therapeutic school to provide services to an adult in the same facility and under the same conditions as a child; and
 - c. minimum administration and financial requirements.

R501-15-2. Definitions.

1. "Academic professional" means an educator with a "level 2 license" or "level 3 license," issued in accordance with Section 53A-6-101 et seq.
2. "Adult" means a person 18 years of age or older.
3. "Background screening clearance" means written verification that the Office of Licensing has approved an applicant's criminal, abuse, neglect, and exploitation background screenings.
4. "Child" is defined in Section 62A-2-101.
5. "Client" is defined in Section 62A-2-101.
6. "Dangerous weapon" is defined in Section 76-10-501.
7. "Dietician" means an individual certified in accordance with Utah Code Ann. Title 58 Chapter 49.
8. "Direct access" is defined in Section 62A-2-101.
9. "Direct care staff" means an individual who provides educational, therapeutic services, supervision or care directly to a client, and does not include support staff who do not supervise

clients and who only provide support services such as maintenance, office or kitchen duties.

10. "Directly supervised" is defined in Section 62A-2-120.
11. "Explosive, chemical, or incendiary device" is defined in Section 76-10-306.
12. "Facility" means the physical area where program activities take place, and includes the buildings and grounds that are owned or leased by the therapeutic school or its governing body.
13. "Firearm or antique firearm" are defined in Section 76-10-501.
14. "Incident report" means a written description of any notable event, including but not limited to any crime, discipline, injury or illness, or unauthorized absence, and how that event was addressed.
15. "Medical practitioner" means an individual licensed by the State of Utah under Utah Code Ann. Title 58 as a physician, dentist, physician's assistant, practical nurse, or registered nurse.
16. "Mental health therapist" is defined in Section 58-60-102.
17. "Mental illness" is defined in Section 62A-15-602.
18. "Mental retardation" means having significantly below average intellectual functioning, and at the same time needing help with two or more basic life skills.
19. "On call" means immediately available to staff by telephone, and able to be present on site within one hour after a staff telephone call for assistance.
20. "On duty" means awake, within visual and auditory proximity of clients, and immediately available to clients.
21. "Recreational therapist" means an individual licensed to practice recreational therapy in accordance with Utah Code Ann. Title 58 Chapter 40.
22. "Regular business hours" is defined in Section 62A-2-101.
23. "Residential treatment" is defined in Section 62A-2-101.
24. "Service plan" means a written description of the educational, therapeutic, and other services an individual client requires, as determined and updated after periodic assessments by a mental health therapist or an academic professional.
25. "Sick" means to have a fever, an illness that may be contagious, or to be experiencing diarrhea or vomiting.
26. "Staff" means therapeutic school directors, supervisors, faculty, employees, agents, interns or volunteers who provide any therapeutic school services.
27. "Supervisor designee" means a direct care staff who currently meets all qualifications described in R501-15-6.C and is assigned by the program Director to act as a supervisor for a specified limited period of time.
28. "Therapeutic school" is defined in Section 62A-2-101.

R501-15-3. Legal Requirements.

1. A therapeutic school shall comply with this R501-15 and:
 - a. R495-876, Provider Code of Conduct;
 - b. R501-2, Core Standards;
 - c. R501-14, Background Screening;

d. R710-4, Buildings Under the Jurisdiction of the State Fire Prevention Board;

e. R710-9, Rules Pursuant to the Utah Fire Prevention Law; and

f. all applicable local, state, and federal laws.

2.a. A therapeutic school shall comply with R501-19 and obtain a residential treatment license prior to offering any residential treatment services.

b. A therapeutic school shall comply with R501-16 and obtain an intermediate secure treatment license prior to offering any intermediate secure treatment services.

R501-15-4. Administration Requirements.

1. A current policy and procedure manual will be maintained, and shall include:

a. admission criteria and procedures, which shall include:

i. A student may not attend a therapeutic school unless there is presented to the school a certificate of immunization from a licensed physician or authorized representative of the state or local health department stating that the student has received immunization against communicable diseases as required by Utah Administrative Rule R396-100, unless exempted as provided in Section 53A-11-302; and

ii. client admission, exclusion, and expulsion criteria described in Subection 501-15-4.B.1.

b. quarterly client needs evaluation and assessment procedures;

c. behavior management training requirements;

d. methods for compliance with each section of this R501-15;

e. an emergency transportation plan, describing how the therapeutic school shall safely transport each client to the client's legal guardian within 48 hours;

f. an emergency response plan, describing how the therapeutic school shall safely care for each client in the event of severe weather, a fire, natural disaster, significant criminal activity, major medical incident, prolonged power outage, or other emergency; and

g. methods for compliance with each legal requirement.

2. A current client manual will be provided to each client and each client's legal guardian before the therapeutic school accepts any payment or processes any application to provide services. The manual shall include detailed descriptions of:

a. client admission, exclusion, and expulsion criteria and procedures, including but not limited to:

i. A therapeutic school shall not admit or provide services to an individual who:

A. has a recent history (within the past 2 years) of attempting suicide or making serious self-harm gestures (requiring medical or therapeutic treatment).

B. has a psychosis, schizophrenia, severe depression, mental retardation, or a severe mental illness (requiring medical or therapeutic treatment).

C. is violent, highly combative, or physically or sexually aggressive.

D. presents substantial security risks.

E. requires medical detoxification.

F. lacks the ability to engage in a rational decision-making process or exhibits severely impaired judgment, or

G. has a history of repeated runaway attempts or incidents;

ii. A therapeutic school shall expel a client who exhibits high risk behavior or conditions, including but not limited to a client who:

A. attempts suicide or makes serious self-harm gestures (requiring medical or therapeutic treatment).

B. has a psychosis, schizophrenia, severe depression, mental retardation, or a severe mental illness (requiring medical or therapeutic treatment).

C. is violent, highly combative, or physically or sexually aggressive.

D. presents substantial security risks.

E. requires medical detoxification.

F. lacks the ability to engage in a rational decision-making process or exhibits severely impaired judgment.

G. runs away or attempts to runaway more than two times.

H. uses or attempts to use illegal substances (including but not limited to drugs or alcohol) more than two times, or

I. exhibits any other behavioral or emotional conditions that require more intense supervision and treatment than that permitted in a therapeutic school;

b. academic accreditation, or disclosure that the school is not accredited;

c. curriculum;

d. criteria for awarding course credit, and whether credits are transferable;

e. grades, progress assessment, and testing;

f. academic and career counseling;

g. academic activities and methods;

h. graduation requirements;

i. post-graduation planning services;

j. methods of providing specialized structure and supervision of clients on-site;

k. methods of providing specialized structure and supervision of clients off-site;

l. services or treatment related to a client's disability, emotional development, behavioral development, familial development, or social development;

m. behavior management practices;

n. individual, group, or family counseling services;

o. therapeutic school rules, including but not limited to rules regarding discipline, searches, visitation, correspondence, and personal possessions;

p. food service and weekly menus;

q. physical education and recreational activities;

r. client rights statement;

s. permitted and prohibited weapons;

t. a client grievance policy, including an appeal process; and

u. name and contact information for the Office of Licensing.

3. All staff and client files, manuals, and records shall be maintained in an on-site office. The on duty supervisor or supervisor designee shall have access to all locked files, including computer files, and make them available upon request to the Office of Licensing.

R501-15-5. Financial Requirements.

1. A therapeutic school shall provide a written disclosure of all fees and expenses a client may incur, and identify which fees may be non-refundable, before accepting any payment, processing any application, or entering any contract to provide client services.

2. A therapeutic school shall provide an itemized accounting of actual expenditures made on behalf of each client before requiring reimbursement from the client's guardian.

3. A therapeutic school shall maintain an accurate log of all funds deposited and all withdrawals made for the personal use of each client. Receipts for purchases of over \$20.00 shall be signed by the client and staff, and maintained with the log.

R501-15-6. Staff Requirements.

1. Each owner and board member of a therapeutic school shall successfully complete a minimum of 8 hours of annual training relating to therapeutic school services.

2. A therapeutic school shall employ a director who is responsible for daily client supervision and operation of the program.

a. A director shall be on duty or on call at all times.

b. The director shall:

i. be at least 25 years of age;

ii. have a BS or BS social services degree, or a minimum of three years of documented training or experience in providing therapeutic school or residential treatment services;

iii. have a minimum of two years of therapeutic school or residential treatment program supervisory experience; and

iv. demonstrate a comprehensive knowledge of this R501-15, R495-876, R501-1, R501-2, R501-3, R710-4, R710-9, and all applicable local, state, and federal laws.

c. The governing body of a therapeutic school may appoint an acting director to fulfill the responsibilities of the Director.

i. An acting director shall satisfy all requirements of Subsection R501-15-6.B.2 at the time of appointment.

3. A therapeutic school shall have a minimum of one supervisor or supervisor designee on duty at all times.

a. A supervisor or supervisor designee shall have:

i. a demonstrated, documented competency and proficiency in providing services to children in out-of-home placements;

ii. qualifications, including education, experience, licensing or certification requirements, and current annual continuing education and training, directly related to providing:

A. specialized structure and supervision of clients; or

B. services or treatment related to a client's disability, emotional development, behavioral development, familial development, or social development;

iii. current certification in standard first aid;

iv. current certification in CPR;

v. current certification in passive restraint techniques; and

vi. current background screening clearance.

4. A therapeutic school shall maintain a staff manual, which shall include specific:

a. job descriptions for each staff position;

b. qualifications, including education, experience, and licensing or certification requirements, for each staff position;

c. competency and proficiency requirements for each staff position; and

d. continuing education and training requirements for each staff position.

5. Each staff with direct access to a client shall be directly supervised by a supervisor or supervisor designee until the staff:

a. achieves the qualifications, competency and proficiency requirements, and training requirements of the applicable job description;

b. receives current certification in standard first aid;

c. receives current certification in CPR;

d. receives current certification in passive restraint techniques;

e. successfully completes annual training in working with clients who have a history of failing to function at home or in school;

f. receives current background screening clearance; and

g. demonstrates a working knowledge of:

A. R495-876, Provider Code of Conduct;

B. R501-2, Core Standards;

C. R501-15, Therapeutic Schools;

D. the current therapeutic school policy and procedure manual;

E. the current therapeutic school client manual and

F. all applicable local, state, and federal laws.

6. A therapeutic school shall have a policy, subject to the approval of the Office of Licensing, which clearly defines the minimum levels of supervision of clients by direct care staff.

a. A therapeutic school shall submit a proposed minimum direct care staff-to-client ratio with its license application and each time the activities or the client population of the therapeutic school are modified.

b. A therapeutic school shall identify the minimum direct care staff-to-client ratio for each type of activity its clients engage in, including but not limited to various types of on-site and off-site activities, specific low risk and high risk activities, individual and group activities, and waking and sleeping hours.

c. A therapeutic school shall consider factors particular to its client population, including but not limited to clients' presenting problems, risk to the community, age, maturity, behavior, and daily schedule, in determining its minimum direct care staff-to-client ratio.

d. A minimum of 2 staff shall be on duty at all times.

e. A minimum of one male staff shall be on duty when a male client is present, and a minimum of one female staff shall be on duty when a female client is present.

f. A client who has earned the privilege of unsupervised time off site shall be required to engage in two-way communication with on duty direct care staff once every 4 hours.

i. A therapeutic school shall develop and adhere to a policy that specifies what measures shall be taken if a client fails to check-in with staff when scheduled.

g. A therapeutic school's approved minimum direct care staff-to-client ratio shall be visibly posted.

h. A therapeutic school shall comply with approved minimum direct care staff-to-client ratios.

i. Support staff shall not be counted when ascertaining compliance with the approved minimum direct care staff-to-client ratios.

7. A therapeutic school shall be required to justify, to the satisfaction of the Office of Licensing, basic low risk, on-site "waking hours" direct care staff-to-client ratio that does not meet or exceed:

- a. two direct care staff on duty for 1-8 clients;
- b. three direct care staff on duty for 9-24 clients;
- c. four direct care staff on duty for 25-48 clients;
- d. five direct care staff on duty for 49-96 clients;
- e. 1:20 direct care staff-to-client ratio for 97 or more clients, and never any less than six direct care staff on duty.

8. A therapeutic school shall be required to justify, to the satisfaction of the Office of Licensing, any "sleeping hours" direct care staff-to-client ratio that does not meet or exceed:

- a. two direct care staff on duty for 1-48 clients;
- b. a 1:40 direct care staff-to-client ratio for 49 or more clients, and never any less than three direct care staff on duty.

R501-15-7. Documentation.

1. A therapeutic school shall maintain a current roster of all clients, including the name, date of birth, sex, and emergency contact information.

2. A therapeutic school shall maintain staff files, which shall include:

- a. application and resume;
- b. qualifications for the staff position held;
- c. written competency evaluations, which shall be completed six months after the date of hire and a minimum of once annually;
- d. continuing education, training, and certifications; and
- e. background screening approval verification.

3. A therapeutic school shall maintain client files, which shall include:

- a. application forms and contracts signed by client's legal guardian;
- b. acknowledgment of client rights signed by client and client's legal guardian;
- c. academic records, including quarterly progress reports and all records of standardized testing, grades, credits earned, and diplomas awarded;
- d. medical records, including medication log and medical treatment records;
- e. counseling notes, signed by the counselor;
- f. incident reports, signed by supervisor or supervisor designee on duty; and
- g. daily shift report, signed by supervisor or supervisor designee on duty.

R501-15-8. Client Services.

1. A service plan, to include specific educational and therapeutic goals, shall be developed within thirty days after admission.

a. A service plan shall be reviewed, updated, and signed by the client and a supervisor no less than quarterly.

i. the service plan shall include a quarterly reassessment of the suitability of the therapeutic school in providing for the client's needs.

b. A copy of the service plan shall be provided to the client's legal guardian within two weeks after it is developed and within two weeks after it is updated.

2. A therapeutic school shall have written policies and procedures describing how medical services will be promptly provided.

a. A therapeutic school that must travel more than thirty miles to an emergency room or 24-hour urgent care facility shall retain the on-call services of a medical practitioner and a licensed mental health therapist.

b. Upon admission, each client shall be informed of the right to consult with a medical practitioner or a licensed mental health therapist.

3. A client who has a serious illness, who sustains a serious injury, or who requests the services of a medical practitioner, shall receive an immediate assessment by a certified wilderness first responder, certified EMT, or a medical practitioner.

a. The therapeutic school shall attach the written assessment to an incident report.

b. The therapeutic school shall comply with the recommendations of the certified wilderness first responder, certified EMT, or medical practitioner.

4. A monthly schedule of activities shall be posted in the common area and the office. Monthly schedules of activities shall be filed and retained for a minimum of one year.

5. A therapeutic school's academic curriculum shall be accredited by an accrediting entity recognized by the Utah State Board of Education, or it shall present an educational service plan and educational funding plan in accordance with Section 62A-2-108.1.

a. The therapeutic school curriculum shall be provided to each client and the client's legal guardian prior to accepting any payment or processing any application to provide services.

b. The therapeutic school curriculum shall be reviewed and updated annually.

c. Modifications to the curriculum shall be provided to each client and the client's legal guardian within two weeks of any curriculum change.

6. The therapeutic school shall monitor and document each client's academic progress, and communicate this information to the client's legal guardian monthly.

R501-15-9. Physical Environment.

1. A therapeutic school shall provide written verification of compliance with:

- a. local zoning ordinances;
- b. local business license requirements;
- c. local building codes, as evidenced by the local governmental entity's building inspector;
- d. state fire prevention laws and rules; and
- e. state and local health codes and rules regarding sanitation and infectious disease control.

2. The building and grounds shall be maintained in a safe and sanitary manner.

3. A therapeutic school shall have on-site offices.

a. Staff and client records shall be stored in locked file cabinets when not in active use.

b. A private office shall be available for individual counseling sessions.

4. A therapeutic school shall provide indoor common areas, such as gymnasiums, recreation areas, cafeterias, classrooms, libraries, and lounges, for group activities.

_____ a. The total common area space in a therapeutic school shall be a minimum of thirty square feet per client.

_____ 5.a. A therapeutic school shall maintain a minimum of 3 feet between beds and 2 feet at the end of each bed.

_____ b. Bedroom ceilings shall be a minimum of 7 feet in height.

_____ c. A minimum of fifty square feet per client shall be provided in a multiple occupant bedroom.

_____ i. Storage space shall not be counted when calculating square footage requirements.

_____ d. A minimum eighty square feet per client shall be provided in a single occupant bedroom.

_____ i. Storage space shall not be counted when calculating square footage requirements.

_____ e. Each client shall have a minimum of thirty cubic feet of private storage space.

_____ f. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

_____ g. Each bed shall be solidly constructed.

_____ h. Bed mattresses shall be in a clean and safe condition.

_____ i. Each client shall be provided with clean linens upon arrival, when soiled, and a minimum of once per week.

_____ j. Sleeping quarters serving male and female clients shall be structurally separated.

_____ 6. A therapeutic school shall provide a minimum of one toilet, one sink, one mirror, and one bathtub or shower, for each six clients.

_____ a. Each bathroom shall be designated for males only or for females only.

_____ b. A bathroom with multiple toilets, showers, or bathtubs shall be subdivided to preserve each client's privacy.

_____ c. Each bathroom shall be maintained in good operating order and in a clean and safe condition.

_____ d. Each bathroom shall be equipped with personal hygiene supplies, including but not limited to toilet paper, clean towels, trashcans, and soap.

_____ e. Bathrooms shall be well lighted and ventilated by mechanical means or equipped with a screened window that opens.

_____ 7. Live-in staff shall have a separate bedroom with a private bathroom.

_____ 8. Clients who are sick shall have a bedroom and bathroom separate from clients who are not sick.

_____ 9. All furniture and equipment shall be maintained in a clean and safe condition.

_____ 10. School desks or tables, lights, and chairs shall be provided for each client.

_____ 11. A therapeutic school shall contract with a laundry service or shall provide laundry appliances and supplies for washing, drying, and ironing.

_____ a. Each client shall have a dirty laundry hamper for personal linens and clothing;

_____ b. all personal linens and clothing shall be laundered weekly;

_____ c. clients who launder their own linens or clothing shall have weekly access to laundry appliances and supplies for washing, drying, and ironing;

_____ d. a common laundry hamper shall be provided for linens owned by the therapeutic school;

_____ i. dirty linens shall be laundered within 72 hours; and

_____ e. laundry appliances shall be maintained in a clean and safe operating condition.

_____ 12.a. Firearms, antique firearms, ammunition, and explosive, chemical, or incendiary devices, shall not be permitted on site.

_____ b. Dangerous weapons, including but not limited to tools, knives (including kitchen knives), scissors, matches, lighters, clubs, bats, and arrows, shall be inaccessible to clients, except as specifically authorized in the client manual.

_____ i. A therapeutic school's client manual shall describe which dangerous weapons are permitted and which dangerous weapons are prohibited on site.

_____ A. The determination of permitted and prohibited dangerous weapons shall be made in accordance with the age and behavioral characteristics of the client population to be served.

_____ ii. A therapeutic school's client manual shall describe how dangerous weapons shall be stored, and the circumstances under which they may be accessible to clients.

_____ 13.a. Animals and pets shall be free from disease and cared for in a safe and clean manner.

_____ b. A therapeutic school shall maintain a file documenting the health of each pet or domestic animal on site. The file shall include written verification of each animal's current rabies vaccinations, species-specific vaccinations, health care, and health history.

R501-15-10. Food Service.

_____ 1. A therapeutic school shall contract with or employ a dietitian to plan nutritious, appetizing, snacks and meals.

_____ a. a current weekly menu shall be posted in the kitchen and the office.

_____ 2. A therapeutic school shall provide snacks and three daily meals in accordance with the dietitian's menu.

_____ 3. A therapeutic school shall maintain a current log of each client's food allergies and other individual dietary needs, and comply with the instructions of the client's physician or dietician.

_____ 4. A therapeutic school shall establish and post kitchen safety and sanitation rules.

_____ 5. A therapeutic school kitchen shall have clean, safe, and operational equipment and supplies for the preparation, storage, serving, and clean up of food.

_____ 6. A dining area shall be provided, with tables and chairs for each client.

_____ 7. The dining area shall be maintained in a clean and safe condition.

_____ 8. No staff or client shall prepare food without first obtaining Utah Department of Health food handler certification.

R501-15-11. Hazardous Chemicals and Materials.

_____ 1. A therapeutic school shall place all hazardous chemicals and materials, including but not limited to poisonous substances, explosive or flammable substances, laundry detergent and cleaning supplies, in locked storage when not in active use.

_____ a. a client shall have no access to any hazardous chemicals or materials unless the client is directly supervised by staff.

_____ 2. A therapeutic school shall place all medications in locked storage when not in active use.

a. Non-prescription medications shall be stored in their original manufacturer's packaging together with manufacturer's directions and warnings.

b. Prescription medications shall be stored in their original pharmacy packaging together with the pharmacy label, directions and warnings.

3. A therapeutic school supervisor or supervisor designee shall:

a. administer or oversee the self-administration of prescription medications only as prescribed by a licensed physician;

b. administer or oversee the self-administration of non-prescription medications only as directed by the manufacturer;

c. observe the client consume any medication;

d. maintain an individual client medication log, which shall include the medication, time and dosage dispensed, and the effects of the medication.

4. Each client medication log shall be maintained together with the medication in locked storage while the client is actively enrolled in the therapeutic school, and transferred to the client's file when the client leaves the therapeutic school.

5. Unused medications shall be destroyed by two staff, and the destruction shall be documented.

KEY: human services, therapeutic schools

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 62A-2-106

**Insurance, Administration
R590-222-5
License Requirements**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 34152

FILED: 10/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The department inadvertently failed to include the failure to submit a renewal application as a reason to lapse the license.

SUMMARY OF THE RULE OR CHANGE: The change adds one additional situation in which a license may be lapsed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-36-119

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This will not create any additional work for department employees. The process for review of renewals is already in place.

◆ **LOCAL GOVERNMENTS:** This rule only applies to the relationship between the department and their licensees.

◆ **SMALL BUSINESSES:** The change to this rule will affect small and large businesses the same. The rule already requires Life Settlement Providers to submit a renewal application. The change provides for a penalty if not submitted. Failure to submit the renewal application has been a problem in the past and could result in a late fee of \$50 if the license is not renewed within 30 days of the renewal date. If the license is not activated at this point the provider will need to reapply for a license and pay \$1,650, whereas the renewal fee is \$950. Currently there are around 27 Life Settlement Providers licensed in Utah.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change to this rule will affect small and large businesses the same. The rule already requires Life Settlement Providers to submit a renewal application. The change provides for a penalty if not submitted. Failure to submit the renewal application has been a problem in the past and could result in a late fee of \$50 if the license is not renewed within 30 days of the renewal date. If the license is not activated at this point the provider will need to reapply for a license and pay \$1,650, whereas the renewal fee is \$950. Currently there are around 27 Life Settlement Providers licensed in Utah. This rule will have no fiscal impact on consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to this rule will affect small and large businesses the same. The rule already requires Life Settlement Providers to submit a renewal application. The change provides for a penalty if not submitted. Failure to submit the renewal application has been a problem in the past and could result in a late fee of \$50 if the license is not renewed within 30 days of the renewal date. If the license is not activated at this point the provider will need to reapply for a license and pay \$1,650, whereas the renewal fee is \$950. Currently there are around 27 Life Settlement Providers licensed in Utah. This rule will have no fiscal impact on consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Life Settlement Providers will need to be vigilant in the renewal of their policies so as to not allow them to lapse incurring a \$50 late fee or \$1,650 fee to issue a new license.

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 by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-222. Life Settlements.

R590-222-5. License Requirements.

(1) Life Settlement Provider License.

(a) A person may not perform, or advertise any service as a life settlement provider in Utah, without a valid license.

(b) A life settlement provider license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website. For the initial application, see Appendix A and for the renewal application, see Appendix E;

(ii) with an initial application, provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that life settlement proceeds will be sent to the owner within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) with an initial application, provide the antifraud plan as required by Section 31A-36-117;

(iv) with both an initial and renewal application, provide any other information requested by the commissioner; and

(v) with both an initial and renewal application, provide evidence of financial responsibility in the amount of \$250,000 in the form of a surety bond issued by an insurer authorized in this state. The surety bond shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the life settlement provider;

(A) The evidence of financial responsibility shall remain in force for as long as the licensee is active.

(B) The bond shall not be terminated or reduced without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a surety bond, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the life settlement provider is licensed as a life settlement provider as long as the benefits provided by the surety bond extend to this state.

(d) The commissioner may refuse to issue or renew a license of a life settlement provider if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If, ~~within the time prescribed,~~ a life settlement provider fails to pay the renewal fee ~~[within the time prescribed or],~~ fails to submit the ~~renewal application,~~ or fails to submit the report[s] required in Section R590-222-6, the nonpayment or failure to submit ~~[the required reports]~~ shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a life settlement provider has, at the time of license renewal, life settlements where the insured has not died, the life settlement provider shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the life settlement provider properly assigns, sells, or otherwise transfers the life settlements where the insured has not died; or

(B) the date that the last insured covered by a life settlement transaction has died;

(ii) designate, in writing, either the life settlement provider that entered into the life settlement or the producer who received commission from the life settlement, if applicable, or any other life settlement provider or producer licensed in this state, to make all inquiries to the owner, or the owner's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident life settlement provider unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Life Settlement Producer license.

Life settlement producers shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

KEY: insurance, life settlement

Date of Enactment or Last Substantive Amendment: ~~June 25, 2009~~2010

Notice of Continuation: June 2, 2008

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-36-119

Labor Commission, Industrial Accidents
R612-4-2
 Premium Rates for the Uninsured
 Employers' Fund and the Employers'
 Reinsurance Fund

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34153

FILED: 10/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Workers' compensation insurance premiums in Utah include an assessment to fund the Employers' Reinsurance Fund (ERF) and the Uninsured Employers Fund (UEF). Employers that self-insure their workers' compensation liabilities are required to pay an equivalent assessment. The proposed rule establishes these assessment rates for the 2011 calendar year.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment lowers that portion of the workers' compensation insurance premium assessment used to fund the ERF from 3.5% for 2010 to 3% for 2011, and leaves the portion used to fund the UEF unchanged at 0.05%.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-2-202 and Section 59-9-101.3 and Subsection 59-9-101(2)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The proposed amendment is expected to reduce the state's expense for workers' compensation insurance by 0.5% from what that expense would be if the proposed amendment were not adopted.
- ◆ LOCAL GOVERNMENTS: The proposed amendment is expected to reduce local government expense for workers' compensation insurance by 0.5% from what such expense would be if the proposed amendment were not adopted.
- ◆ SMALL BUSINESSES: The proposed amendment is expected to reduce small businesses' expense for workers' compensation insurance by 0.5% from what such expense would be if the proposed amendment were not adopted.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment is expected to reduce expense for workers' compensation insurance by 0.5% from what such expense would be if the proposed amendment were not adopted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By reducing the overall premium assessment rate, the proposed amendment will lower workers' compensation costs for employers. The amendment imposes no compliance costs on any affected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: By reducing the ERF assessment rate, businesses will enjoy a reduction in workers' compensation coverage costs. This reduction in one component of business costs will have a positive fiscal impact on businesses.

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

LABOR COMMISSION
 INDUSTRIAL ACCIDENTS
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R612. Labor Commission, Industrial Accidents.

R612-4. Premium Rates.

R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 20~~09~~11, as established by the Labor Commission, shall be:

1. 0.05% for the Uninsured Employers' Fund;
2. 3.~~5~~0% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates

Date of Enactment or Last Substantive Amendment: [January 1], 2010

Notice of Continuation: January 12, 2006

Authorizing, and Implemented or Interpreted Law: 59-9-101(2)

Tax Commission, Property Tax
R884-24P-53
2010 Valuation Guides for Valuation of
Land Subject to the Farmland
Assessment Act Pursuant to Utah Code
Ann. Section 59-2-515

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34149

FILED: 10/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment annually updates the agricultural productive values to be applied by county assessors to land qualifying for valuation and assessment under the Farmland Assessment Act. The values are recommended to the Commission by the State Farmland Evaluation Advisory Committee, which meets under the authority of Section 59-2-514.

SUMMARY OF THE RULE OR CHANGE: Section 59-2-515 authorizes the State Tax Commission to promulgate rules regarding the Property Tax Act, Part 5, Farmland Assessment Act. Section 59-2-514 authorizes the State Tax Commission to receive valuation recommendations from the State Farmland Advisory Committee for implementation as outlined in Section R884-24P-53.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-514

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amount of savings or cost to state government is undetermined. The state receives tax revenue for assessing and collecting and for the Education Fund based on increased or decreased real and personal property valuation, including property assessed under the Farmland Assessment Act (FAA). Property valuation (taxable value) changes have been recommended by class and by county. This year, 104 class/county valuations will increase, 62 will decrease and 298 will remain unchanged. No total cost or savings could be calculated without an exhaustive study of farmland acreage in each county by class, a listing of property newly qualified for FAA assessment during 2011 and a listing of property no longer qualifying that is removed from FAA during 2010. However, it is estimated that the overall change is minimal due to this amendment.

◆ **LOCAL GOVERNMENTS:** The amount of saving or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased property valuation, including property assessed under FAA.

Property valuation changes have been recommended by class and by county. This year, 104 class/county valuations will increase, 62 will decrease and 298 will remain unchanged. No total cost or savings could be calculated without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2011 and a listing of property no longer qualifying that is removed from FAA during 2010. However, it is estimated that the overall change is minimal due to this amendment. County assessor offices statewide will be required to input the new value indicators into their computer systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant cost in time or money to the assessors' offices.

◆ **SMALL BUSINESSES:** Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county as 104 such value indicators will increase, 62 will decrease and 298 will not change. The effect on the property owner will be valuation increase, decrease, or no change depending on the mix of property types and situs. No aggregate compliance cost can be determined without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2011 and a listing of property no longer qualifying which is removed from FAA during 2010. In addition, the compliance cost will further be altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county as 104 such value indicators will increase, 62 will decrease and 298 will not change. The effect on the property owner will be valuation increase, decrease or no change depending on the mix of property types and situs. No aggregate compliance cost can be determined without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2011 and a listing of property no longer qualifying which is removed from FAA during 2010. In addition, the compliance cost will further be altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county as 104 such value indicators will increase, 62 will decrease and 298 will not change. The effect on the property owner will be valuation increase, decrease or no change depending on the mix of property types and situs. No aggregate compliance cost can be determined without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2011 and a listing of property no longer qualifying that is removed from FAA during 2010. In addition, the compliance cost will

further be altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No cost to businesses.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-53. [2010]2011 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property ~~[defined as farmland]~~ qualifying for agricultural use assessment pursuant to Section 59-2-~~501~~ 503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	[835]840
2)	Cache	[725]730
3)	Carbon	[540]545
4)	Davis	[875]880
5)	Emery	[520]525
6)	Iron	[835]840
7)	Kane	[435]440
8)	Millard	[825]830
9)	Salt Lake	[725]730
10)	Utah	[765]770
11)	Washington	[685]690
12)	Weber	[830]835

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	[735]738
2)	Cache	[620]623
3)	Carbon	[430]433
4)	Davis	[770]773
5)	Duchesne	[505]508
6)	Emery	[420]423
7)	Grand	[405]407
8)	Iron	[735]738
9)	Juab	[455]458
10)	Kane	[335]338
11)	Millard	[725]728
12)	Salt Lake	[625]628
13)	Sanpete	[560]563
14)	Sevier	[585]588
15)	Summit	[485]488
16)	Tooele	[470]472
17)	Utah	[665]668
18)	Wasatch	[510]513
19)	Washington	[585]588
20)	Weber	[730]733

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	[595]596
2)	Box Elder	[580]581
3)	Cache	[470]471
4)	Carbon	[285]287
5)	Davis	[620]622
6)	Duchesne	[355]357
7)	Emery	[265]267
8)	Garfield	[220]222
9)	Grand	[255]256
10)	Iron	[585]587
11)	Juab	[305]307
12)	Kane	[185]187
13)	Millard	[575]577
14)	Morgan	[405]406
15)	Piute	[350]351
16)	Rich	[185]187
17)	Salt Lake	[475]477
18)	San Juan	[180]182
19)	Sanpete	[410]412
20)	Sevier	[435]437
21)	Summit	[330]332
22)	Tooele	[315]316
23)	Uintah	[385]386
24)	Utah	[510]511

25) Wasatch	[355] 356
26) Washington	[430] 432
27) Wayne	[345] 347
28) Weber	[580] 582

25) Washington	[740] 743
26) Wayne	620
27) Weber	[670] 673

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	490
2) Box Elder	480
3) Cache	365
4) Carbon	185
5) Daggett	205
6) Davis	520
7) Duchesne	250
8) Emery	165
9) Garfield	120
10) Grand	155
11) Iron	480
12) Juab	205
13) Kane	85
14) Millard	470
15) Morgan	300
16) Piute	245
17) Rich	[85] 87
18) Salt Lake	370
19) San Juan	[80] 82
20) Sanpete	310
21) Sevier	335
22) Summit	230
23) Tooele	215
24) Uintah	285
25) Utah	410
26) Wasatch	255
27) Washington	325
28) Wayne	245
29) Weber	475

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	245
2) Box Elder	260
3) Cache	270
4) Carbon	130
5) Daggett	160
6) Davis	270
7) Duchesne	165
8) Emery	140
9) Garfield	105
10) Grand	135
11) Iron	262
12) Juab	150
13) Kane	110
14) Millard	195
15) Morgan	197
16) Piute	192
17) Rich	107
18) Salt Lake	225
19) Sanpete	195
20) Sevier	200
21) Summit	205
22) Tooele	187
23) Uintah	207
24) Utah	250
25) Wasatch	210
26) Washington	230
27) Wayne	175
28) Weber	305

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	620
2) Box Elder	[670] 675
3) Cache	620
4) Carbon	620
5) Davis	[675] 678
6) Duchesne	620
7) Emery	620
8) Garfield	620
9) Grand	620
10) Iron	620
11) Juab	620
12) Kane	620
13) Millard	620
14) Morgan	620
15) Piute	620
16) Salt Lake	[620] 623
17) San Juan	620
18) Sanpete	620
19) Sevier	620
20) Summit	620
21) Tooele	620
22) Uintah	620
23) Utah	[680] 685
24) Wasatch	620

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1) Beaver	[52] 55
2) Box Elder	[96] 97
3) Cache	[122] 125
4) Carbon	52
5) Davis	[50] 53
6) Duchesne	57
7) Garfield	52
8) Grand	52
9) Iron	52
10) Juab	52
11) Kane	52
12) Millard	50
13) Morgan	[67] 68
14) Rich	52
15) Salt Lake	[52] 55
16) San Juan	[53] 55
17) Sanpete	57
18) Summit	52
19) Tooele	[52] 55
20) Uintah	57
21) Utah	52
22) Wasatch	52
23) Washington	[50] 52
24) Weber	[80] 82

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	[16] 17
2) Box Elder	[60] 61
3) Cache	[86] 87
4) Carbon	16
5) Davis	[15] 16
6) Duchesne	21
7) Garfield	16
8) Grand	16
9) Iron	16
10) Juab	16
11) Kane	16
12) Millard	15
13) Morgan	31
14) Rich	16
15) Salt Lake	16
16) San Juan	[17] 18
17) Sanpete	21
18) Summit	16
19) Tooele	16
20) Uintah	21
21) Utah	16
22) Wasatch	16
23) Washington	15
24) Weber	[45] 47

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1) Beaver	[75] 73
2) Box Elder	[76] 74
3) Cache	72
4) Carbon	52
5) Daggett	[56] 55
6) Davis	[62] 61
7) Duchesne	[71] 70
8) Emery	[74] 73
9) Garfield	[79] 78
10) Grand	[80] 79
11) Iron	75
12) Juab	[66] 65
13) Kane	[77] 76
14) Millard	[79] 78
15) Morgan	68
16) Piute	[93] 92
17) Rich	[67] 66
18) Salt Lake	[68] 67
19) San Juan	73
20) Sanpete	[65] 64
21) Sevier	[66] 65
22) Summit	[74] 73
23) Tooele	[73] 72
24) Uintah	[80] 82
25) Utah	65
26) Wasatch	54
27) Washington	[68] 67
28) Wayne	[91] 90
29) Weber	70

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1) Beaver	[25] 23
2) Box Elder	[25] 23
3) Cache	23
4) Carbon	16
5) Daggett	[16] 15
6) Davis	[20] 19
7) Duchesne	[24] 23
8) Emery	[23] 22
9) Garfield	[25] 24
10) Grand	[24] 23
11) Iron	[24] 23
12) Juab	[20] 19
13) Kane	[26] 25
14) Millard	[26] 25
15) Morgan	22
16) Piute	[29] 28
17) Rich	[22] 21
18) Salt Lake	[22] 21
19) San Juan	24
20) Sanpete	[21] 20
21) Sevier	[21] 20
22) Summit	[23] 22
23) Tooele	[23] 22
24) Uintah	[26] 29
25) Utah	23
26) Wasatch	18
27) Washington	[23] 22
28) Wayne	[30] 29
29) Weber	21

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1) Beaver	17
2) Box Elder	[18] 17
3) Cache	16
4) Carbon	13
5) Daggett	[13] 12
6) Davis	[14] 13
7) Duchesne	[15] 14
8) Emery	[16] 15
9) Garfield	[18] 17
10) Grand	[17] 16
11) Iron	[17] 16
12) Juab	[15] 14
13) Kane	[17] 16
14) Millard	[18] 17
15) Morgan	14
16) Piute	[20] 19
17) Rich	[15] 14
18) Salt Lake	[15] 14
19) San Juan	16
20) Sanpete	[15] 14
21) Sevier	[15] 14
22) Summit	[16] 15
23) Tooele	[15] 14
24) Uintah	[18] 20
25) Utah	[14] 13
26) Wasatch	13
27) Washington	[15] 14
28) Wayne	[20] 19
29) Weber	15

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land	
1) All Counties	5

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment:
[September 23], 2010
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: 59-2-515

Tax Commission, Property Tax
R884-24P-62
Valuation of State Assessed Unitary
Properties Pursuant to Utah Code Ann.
Section 59-2-201

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34157
FILED: 10/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 59-2-201(6) defines the method for determining the fair market value of aircraft, aircraft type, or mobile flight equipment for tax years 2009 and 2010. The legislature directed the State Tax Commission to promulgate an administrative rule to address airline valuation for subsequent tax years.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment specifies that the preferred valuation methodologies outlined in Tax Commission Section R884-24P-62 be used when possible to value airlines. In addition, the amendment provides that an aircraft valuation manual, with a fleet adjustment, may be used to determine fair market value of an airline when the preferred methods of valuation do not provide a reasonable estimate of fair market value.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-201

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Property tax revenues are local revenues, therefore there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendment adds additional methodologies for determining the fair market value of an airline to what is in the current statute. In some cases, these additional methodologies might result in a determination of fair market value that is higher than that value would have been if the airline had been valued under the current statute. In the aggregate, this increase would be minimal.
- ◆ **SMALL BUSINESSES:** The proposed amendment adds additional methodologies for determining the fair market value of an airline to what is in the current statute. In some cases, these additional methodologies might result in a determination of fair market value that is higher than that value would have been if the airline had been valued under the current statute. In the aggregate, this increase would be minimal.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment adds additional methodologies for determining the fair market value of an airline to what is in the current statute. In some cases, these additional methodologies might result in a determination of fair market value that is higher than that value would have been if the airline had been valued under the current statute. In the aggregate, this increase would be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Large airlines would not see any change in compliance requirements. Small airlines that have at times been given permission to submit abbreviated information could be required to submit the same information submitted by large airlines.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Additional methodologies may result in higher fair market value than under current statute. Some taxpayers may have to submit more information than previous required.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah_2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5) (d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a

preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

- (I) unused capacity;
- (II) economic conditions; or
- (III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting

percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft valuation manual" means a nationally recognized airline price guide containing value estimates for individual commercial aircraft in average condition and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102; and

(C) "airline market indicator" means an estimate of value based on an aircraft valuation manual.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft valuation manual, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft valuation manual, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that manual. If no fleet adjustment is provided in an aircraft valuation manual, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the manual.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft valuation manual under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) may also be included in an assessment or appraisal report for purposes of comparison.

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment:
[September 23], 2010

Notice of Continuation: March 12, 2007

Authorizing, and Implemented or Interpreted Law: 59-2-201

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Workforce Services, Unemployment Insurance **R994-401** Payment of Benefits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34157

FILED: 10/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is to reflect changes in legislation.

SUMMARY OF THE RULE OR CHANGE: H.B. 18 which was passed in the 2010 General Session provides for an alternate base period which this proposed amendment reflects. Subsection 35A-4-401(2)(c) was changed to provide that after the \$25 stimulus payments end, Social Security retirement will not be counted against unemployment benefits. This proposed amendment reflects that change. (DAR NOTE: H.B. 18 (2010) is found at Chapter 282, Laws of Utah 2010, and was effective 05/11/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses as there are no fees associated with this program and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
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 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 NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Kristen Cox, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-401. Payment of Benefits.

R994-401-201. Weekly Benefit Amount (WBA), Maximum Benefit Amount (MBA), and Monetary Determination.

(1) The formulas for determining the WBA and the MBA are found in Section 35A-4-401.

(2) The wages used to determine the WBA and the MBA are limited to wages reported to the Department by base period employers and verifiable wages paid by additional base period employers reported by the claimant in the initial claim. If an employer does not report wages and the claimant can verify wages from that employer, those wages may be included.

(3) The Department will send the claimant a "Notice of Monetary Determination." The notice will inform the claimant of the WBA, MBA, and the wages used to determine the claimant's monetary eligibility. The notice will also inform the claimant of his or her right to appeal the monetary determination. The claimant must notify the Department of any errors in the monetary determination. The time limit for notifying the Department of any errors or for appealing a monetary determination is the same as filing an appeal from an initial Department determination and is governed by rules R994-508-102 through R994-508-104.

(4) The monetary determination is based on the wages actually paid during the base period regardless of when the work was performed.

(5) To be monetarily eligible, a claimant must have earned base period wages of 1 and 1/2 times the high quarter wages and also meet a minimum dollar amount as established by the

monetary base period wage requirement as defined in Section 35A-4-201.

(6) For any claimant whose benefit year is effective on or before January 1, 2011, if the~~the~~ claimant is not monetarily eligible under the 1 and 1/2 times requirement in paragraph (5) of this section, but meets the monetary base period wage requirement, the claimant can still be eligible under this section if the claimant had earnings of at least five percent of the "monetary base period requirement for insured work," as defined in Subsection 35A-4-201(17), in each of at least 20 weeks during the base period. The earnings must be for work performed during each of the 20 weeks, all of which must fall within the base period, regardless of when the claimant received payment for the work. The requirement that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in R994-401-202.

(7) The dollar amount for each of the 20 weeks required to establish eligibility under subsection (6) of this section will be determined by the monetary base period requirement for insured work in effect for the calendar year in which the initial claim is filed even if some or all of the 20 weeks are in a different calendar year.

(8) If the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, and the claimant's benefit year is effective on or before January 1, 2011, it is the claimant's responsibility to show 20 weeks of covered employment which meet the minimum dollar amount. Acceptable proof of covered employment includes:

- (a) appropriately dated check stubs issued by the employer;
- (b) a written statement from the employer showing dates of employment and the amount of earnings for each week;
- (c) time cards;
- (d) canceled payroll checks; or
- (e) personal or business records kept in the normal course of employment that would substantiate work and earnings.

(9) An employer's potential liability is based on its proportion of the claimant's base period wages. Employers will be informed of the wages used in determining a claimant's monetary entitlement, the employer's potential liability for benefits costs, and the right to and time limitation for requesting relief of charges or a correction to wages. A contributory employer is given a notice of all benefit costs each quarter and has the opportunity to report any errors or omissions to the Department at that time as well. The quarterly notices give the employer 30 days to advise the Department of any corrections, as provided in Subsection 35A-4-306(3).

(10) A party failing to file a timely appeal or protest may lose its right to have the monetary determination corrected. An untimely appeal or protest may be considered if the party had good cause, as defined in R994-508-104.

(11) The Department may revise the monetary determination after the expiration of the appeal time if there has been a mistake as to the facts or the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not have reasonably filed a timely appeal. The decision to revise a monetary determination after the appeal time has expired is discretionary with the Department.

R994-401-203. Retirement or Disability Retirement Income.

(1) A claimant's WBA is reduced by 100% of any retirement benefits, social security, pension, or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for claims with an effective date on or after July 4, 2004, and on or before ~~June 27, 2010~~ December 11, 2010 the reduction for social security retirement benefits will only be 50%. For claims with an effective date on or after December 12, 2010, there is no reduction for social security retirement benefits. The payments must be:

(a) from a plan contributed to by a base-period employer. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period;

(b) based on prior employment and the claimant qualifies because of age, length of service, disability, or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k) or IRA should not be used to reduce the WBA Payments from workers' compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former spouse directly and it is pursuant to court order or a signed, stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under Subsection 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving, retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed, would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the WBA. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's WBA will be made.

(2) A claimant who could be eligible for a retirement income, but does not apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the MBA in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in Subsection 35A-4-401(2) (d). The recomputation is effective with the first full calendar week in which the claimant is eligible to receive applicable retirement benefits or adjustments to those benefits.

KEY: unemployment compensation, benefits

Date of Enactment or Last Substantive Amendment:
~~September 29, 2008~~ 2010

Notice of Continuation: May 17, 2007

Authorizing, and Implemented or Interpreted Law:
35A-4-401(1); 35A-4-401(2); 35A-4-401(3); 35A-4-401(6)

**Workforce Services, Unemployment
Insurance
R994-404
Payments Following Workers'
Compensation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34156

FILED: 10/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is to reflect changes in legislation.

SUMMARY OF THE RULE OR CHANGE: H.B. 18 which was passed in the 2010 General Session provides for an alternate base period. This proposed amendment is to bring the rules into compliance with that change. (DAR NOTE: H.B. 18 (2010) is found at Chapter 282, Laws of Utah 2010, and was effective 05/11/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs of savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses as there are no fees associated with this program and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 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 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 NO LATER THAN AT 5:00 PM ON 12/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2010

AUTHORIZED BY: Kristen Cox, Executive Director

R994. Workforce Services, Unemployment Insurance.
R994-404. Payments Following Workers' Compensation.
R994-404-101. Claimants Who Qualify for an Adjustment to the Base Period.

(1) A claimant who was off work due to a work related illness or injury may qualify for an adjusted base period if all of the following elements are satisfied:

(a) the claimant must have received temporary total disability (TTD) compensation for the illness or injury under the workers' compensation or occupational disease laws of this state or under federal law;

(b) the claimant must have received TTD for at least seven full weeks during the ~~[normal]~~base period immediately preceding the effective date of the claim. This can be either the first four of the last five completed calendar quarters or the last four completed calendar quarters as provided in R994-404-104. The weeks need not be consecutive;

(c) the initial claim for unemployment insurance benefits must have been filed no later than 90 calendar days after the claimant was released by his or her health care provider to return to full-time work. This does not include release to limited or light duty work. The effective date of the eligible claim must be within the 90 days regardless of the date on which the claimant contacts the Department to file a claim. For example, if the 90th day falls on Wednesday and the claimant files a claim on Thursday, the effective date of the claim would be Sunday of that calendar week and would fall within the 90 day time limitation;

(d) the initial claim for unemployment insurance benefits must have been filed within 36 months of the week the covered injury or illness occurred. The covered injury can be the initial injury or an event such as a re-injury that caused the claimant to go back on TTD.

(2) Wages previously used to establish a benefit year cannot be re-used.

R994-404-104. Adjustment of the Base Period.

(1) The claimant can file a claim using wages paid during the first four of the last five completed calendar quarters immediately preceding the effective date of the claim~~[week the claim was filed (normal base period)]~~ or the first four of the last five completed calendar quarters prior to the date the claimant left work due to the illness or injury.

(2) If a claimant does not qualify under either base period described in paragraph (1) above, and the claim is effective on or after January 2, 2011, the claimant can use the four completed calendar quarters immediately preceding the effective date of the claim or the four completed calendar quarters immediately prior to the date the claimant left work due to the illness or injury.

KEY: unemployment compensation, workers' compensation
Date of Enactment or Last Substantive Amendment:
~~[September 29, 2008]~~**2010**
Notice of Continuation: May 22, 2007
Authorizing, and Implemented or Interpreted Law: 35A-4-404

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended 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 upon filing.

NOTICES are governed by Section 63G-3-305.

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-40** Private Duty Nursing Service

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 34154
FILED: 10/14/2010

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 26-1-5 grants the Department the authority to adopt rules to carry out the provisions of the Medicaid program that allow Medicaid clients to receive Medicaid services. In addition, Section 26-18-3 requires the Department to implement these provisions of the Medicaid program through its administrative rules. Further, 42 CFR 440.80 specifies the continuous care requirements for private duty nursing services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the last five years, this rule has undergone extensive review and discussion. The Department received public comments on the rule that focus on the need for 24-hour care of ventilator dependent recipients. Concerned parents stated that they could not provide 24-hour care and that their children who require round-the-clock care should not be institutionalized.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it provides medically necessary private duty nursing services for recipients who need continuous care in their homes. Therefore, this rule should be continued. The Department does not disagree with comments that focus on the need for 24-hour care, but the Department is limited in the resources it can provide and cannot provide constant supervision for these services. The Department, therefore, has amended this rule to allow for a better allocation of private duty nursing services among Medicaid recipients, and to allow caregivers the opportunity to receive training from private duty nursing service providers to provide necessary care.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 10/14/2010

Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-59

Audiology-Hearing Services

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34148
FILED: 10/13/2010

**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 26-1-5 grants the Department the authority to adopt rules to carry out the provisions of the Medicaid program that allow Medicaid clients to receive Medicaid services. In addition, Section 26-18-3 requires the Department to implement these provisions of the Medicaid program through its administrative rules. In addition, 42 CFR 440.110 authorizes the provision of audiology services to Medicaid clients that include diagnostic, screening, preventive, or corrective services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department received written comments that requested the agency to incorporate by reference the audiology services provider manual. Among other citations used to reference the need for incorporation, one entity cited Subsection 26-18-3(2), which requires the Medicaid program to implement by rule the services that it provides. Previously, this rule referred to the audiology services provider manual but did not incorporate by reference the services that the manual includes.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it allows clients who meet eligibility requirements under Medicaid to receive audiology-hearing services. Therefore, this rule should be continued. The Department agreed with comments to incorporate the manual by reference and amended the rule accordingly. The Department incorporates the manual by reference on a quarterly basis.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY

CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 10/13/2010

Human Services, Administration,
Administrative Services, Licensing

R501-4

Certified Local Inspectors

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34137
FILED: 10/06/2010

**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: Sections 62-A-101 and 62-A-106 authorize the Office of Licensing to make rules to establish basic standards for licensees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures for complying with Section 62-A-2-108.3 and for the performance of inspections by a certified local inspector. Therefore, this rule should be continued.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
195 N 1950 W

FIRST FLOOR
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Vilma Mosier by phone at 801-538-4041, by FAX at 801-538-4553, or by Internet E-mail at vmosier@utah.gov

AUTHORIZED BY: Ken Stettler, Director

EFFECTIVE: 10/06/2010

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
195 N 1950 W
FIRST FLOOR
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Vilma Mosier by phone at 801-538-4041, by FAX at 801-538-4553, or by Internet E-mail at vmosier@utah.gov

AUTHORIZED BY: Ken Stettler, Director

EFFECTIVE: 10/06/2010

Human Services, Administration,
Administrative Services, Licensing

R501-14

Background Screening

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34138
FILED: 10/06/2010

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: Sections 62-A-101 and 62-A-106 authorize the Office of Licensing to make rules to establish basic standards for licensees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the circumstances under which an applicant may have direct access or provide services to a child or vulnerable adult when the person has a criminal history record, is listed in the Licensing Information System or the statewide database of the Division of Aging and Adult Services, or when juvenile court records show that a court made a substantiated finding under Section 78-A-6-323 that the person committed a severe type of child abuse or neglect. This rule clarifies the standards for approving, denying, or revoking an applicant's background screening. Therefore, this rule should be continued.

Money Management Council,
Administration

R628-4

Bonding of Public Treasurers

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34141
FILED: 10/06/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Money Management Act (Title 51, Chapter 7) in Section 51-7-15, states that any public treasurer the Council designates in rule shall be bonded in the amount set out by Council rule and that the Council shall base the minimum bond amount on the amount of public funds held or in control of the public treasurer.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary to provide criteria for the amount a public treasurer must bond

for to protect public funds from loss in the event of malfeasance by a treasurer or his/her staff. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 ROOM 180 UTAH STATE CAPITOL COMPLEX
 350 N STATE ST
 STE 180
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: William Wallace, Chair

EFFECTIVE: 10/06/2010

**Money Management Council,
 Administration
 R628-11**

**Maximum Amount of Uninsured Public
 Funds Allowed to be Held by any
 Qualified Depository**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 34145
 FILED: 10/12/2010

**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: In Section 51-7-18.1 of the Utah Money Management Act (Title 51, Chapter 7), the Council is charged with determining in council rule the amount of uninsured public funds a qualified depository may hold above the insured amount. This section describes that the Council shall base the amount on the depository's capital and the amount may not be more than two times capital as defined in council 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: There have been no written comments since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Council has used this rule in the last two years to adjust public funds allotments on qualified depositories that have had formal federal enforcement actions placed on them due to financial issues. Without this rule, it would not have been possible to adjust the allotments to better reflect the financial condition of these financial institutions to the public treasurer. The rule needs to be in place to allow the Council to monitor the condition of financial institutions that hold public funds and protect public funds deposited in these institutions. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 ROOM 180 UTAH STATE CAPITOL COMPLEX
 350 N STATE ST
 STE 180
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: William Wallace, Chair

EFFECTIVE: 10/12/2010

**Transportation, Motor Carrier, Ports Of
 Entry
 R912-2
 Mobile and Manufactured Homes**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 34146
 FILED: 10/13/2010

**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 enacted under

Sections 72-7-401 through 72-7-409 which require the Utah Department of Transportation to protect the safety of the traveling public and to establish procedures for the safe movement of oversize and overweight loads on Utah Highways.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received written comments from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring rules governing mobile and manufactured homes remains in force and the Department is required to comply with the law by having this rule in place. Therefore, this rule should be continued.

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:

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 10/13/2010

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

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 (Section 63G-3-305). 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 63G-3-305. 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 Subsection 63G-3-305(8).

Human Services, Administration,
Administrative Services, Licensing
R501-15
Therapeutic Schools

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 34139

FILED: 10/06/2010

SUMMARY: Because a five-year review was not filed by the deadline, the rule has expired and is removed from the Administrative Code. (DAR NOTE: A proposed new rule for R501-15 is under DAR No. 34140 in this issue, November 1, 2010, of the Bulletin to put the rule back in place.)

EFFECTIVE: 10/06/2010

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Agriculture and Food

Animal Industry

No. 33895 (AMD): R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons

Published: 09/01/2010

Effective: 10/12/2010

No. 33896 (AMD): R58-21. Trichomoniasis

Published: 09/01/2010

Effective: 10/12/2010

Plant Industry

No. 33885 (NEW): R68-21. Standard of Identity for Honey

Published: 09/01/2010

Effective: 10/12/2010

Commerce

Real Estate

No. 33901 (AMD): R162-2c-204. License Renewal

Published: 09/01/2010

Effective: 10/09/2010

No. 33906 (AMD): R162-101-2. Definitions

Published: 09/01/2010

Effective: 10/09/2010

No. 33908 (AMD): R162-102. Application Procedures

Published: 09/01/2010

Effective: 10/09/2010

No. 33907 (AMD): R162-106-5. Failure to Respond to Notice

Published: 09/01/2010

Effective: 10/09/2010

No. 33909 (AMD): R162-110. Trainee Registration

Published: 09/01/2010

Effective: 10/09/2010

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Published: 09/01/2010

Effective: 10/11/2010

No. 33946 (AMD): R277-518. Career and Technical

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Published: 09/01/2010

Effective: 10/11/2010

No. 33947 (AMD): R277-601-3. Standards

Published: 09/01/2010

Effective: 10/11/2010

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No. 33916 (AMD): R313-12. General Provisions

Published: 09/01/2010

Effective: 10/13/2010

No. 33918 (AMD): R313-15. Standards for Protection Against Radiation

Published: 09/01/2010

Effective: 10/13/2010

No. 33911 (AMD): R313-18-13. Notifications and Reports to Individuals

Published: 09/01/2010

Effective: 10/13/2010

No. 33919 (AMD): R313-19. Requirements of General Applicability to Licensing of Radioactive Material

Published: 09/01/2010

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No. 33915 (AMD): R313-25-2. Definitions
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No. 33914 (AMD): R313-25-25. Near Surface Land Disposal
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Published: 09/01/2010
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No. 33927 (AMD): R512-202. Child Protective Services,
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Published: 09/01/2010
Effective: 10/13/2010

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Published: 09/01/2010
Effective: 10/11/2010

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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, 2010 through October 15, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules 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).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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ABBREVIATIONS

AMD = Amendment	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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R671-303	Information Received, Maintained or Used by the Board	33371	AMD	06/29/2010	2010-5/50
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PUBLIC SAFETY

Administration

R698-6	Honoring Heroes Restricted Account	33789	NEW	09/01/2010	2010-14/28
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Criminal Investigations and Technical Services, Criminal Identification

R722-310	Regulation of Bail Bond Recovery and Enforcement Agents	33636	5YR	05/12/2010	2010-11/130
R722-320	Undercover Identification	33910	NSC	09/21/2010	Not Printed
R722-330	Licensing of Private Investigators	33567	5YR	04/22/2010	2010-10/167
R722-330	Licensing of Private Investigators	33920	NSC	09/21/2010	Not Printed

Driver License

R708-32	Uninsured Motorist Database	33511	5YR	03/25/2010	2010-8/58
R708-36	Disclosure of Personal Identifying Information in MVRs	33518	5YR	03/30/2010	2010-8/59
R708-37	Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests	33520	5YR	03/30/2010	2010-8/60
R708-39-4	Knowledge Testing	33411	AMD	04/21/2010	2010-6/23
R708-40	Driving Simulators	33519	5YR	03/30/2010	2010-8/60
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	33143	AMD	01/25/2010	2009-23/23
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	33338	AMD	03/24/2010	2010-4/40
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	33512	5YR	03/25/2010	2010-8/61
R708-45	Exception for Renewal or Duplicate License for a Utah Resident Temporarily Residing Out of State	33516	NSC	04/14/2010	Not Printed

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R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	33840	AMD	09/07/2010	2010-15/38
R710-5	Automatic Fire Sprinkler System Inspecting and Testing	33839	AMD	09/07/2010	2010-15/42
R710-6	Liquefied Petroleum Gas Rules	33357	AMD	03/24/2010	2010-4/44
R710-6	Liquefied Petroleum Gas Rules	33513	AMD	05/24/2010	2010-8/28
R710-6	Liquefied Petroleum Gas Rules	33838	AMD	09/07/2010	2010-15/45
R710-8	Day Care Rules	33870	AMD	09/21/2010	2010-16/51
R710-9	Rules Pursuant to the Utah Fire Prevention Law	33575	AMD	07/01/2010	2010-10/143
R710-9	Rules Pursuant to the Utah Fire Prevention Law	33836	AMD	09/07/2010	2010-15/47
R710-9	Rules Pursuant to the Utah Fire Prevention Law	34128	EMR	10/01/2010	2010-20/62
R710-10-8	Non-Affiliated Fire Service Training	33358	AMD	03/24/2010	2010-4/47
R710-11	Fire Alarm System Inspecting and Testing	33880	AMD	09/21/2010	2010-16/54

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R728-409	Refusal, Suspension, or Revocation of Peace Officer Certification	33795	EMR	06/30/2010	2010-14/41
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R728-409	Suspension or Revocation of Peace Officer Certification	33816	R&R	09/09/2010	2010-15/49
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PUBLIC SERVICE COMMISSION

Administration

R746-312	Electrical Interconnection	32881	NEW	04/30/2010	2009-17/40
R746-312	Electrical Interconnection	32881	CPR	04/30/2010	2010-1/64
R746-331	Determination of Exemption of Mutual Water Corporations	33472	REP	06/30/2010	2010-8/35
R746-351	Pricing Flexibility	33886	NSC	09/21/2010	Not Printed
R746-510	Funding for Speech and Hearing Impaired Certified Interpreter Training	33968	5YR	08/18/2010	2010-18/116

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R765-604	New Century Scholarship	33760	AMD	08/09/2010	2010-13/129
R765-609	Regents' Scholarship	33581	NEW	07/15/2010	2010-10/150
R765-626	Lender of Last Resort Program	33556	5YR	04/13/2010	2010-9/48

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R805-4	Illegal, Harmful and Disruptive Behavior on University of Utah Property	33146	NEW	01/07/2010	2009-23/27
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R807-1	Curation of Collections from State Lands	33658	NSC	06/14/2010	Not Printed
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SCHOOL AND INSTITUTIONAL TRUST LANDS

Administration

R850-21	Oil, Gas and Hydrocarbon Resources	33530	5YR	04/01/2010	2010-8/61
R850-22	Bituminous-Asphaltic Sands and Oil Shale Resources	33531	5YR	04/01/2010	2010-8/62
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R850-24	General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits	33533	5YR	04/01/2010	2010-8/63
R850-25	Mineral Leases and Materials Permits	33534	5YR	04/01/2010	2010-8/64
R850-26	Coal Leases	33535	5YR	04/01/2010	2010-8/64
R850-27	Geothermal Steam	33536	5YR	04/01/2010	2010-8/65
R850-50	Range Management	33557	AMD	06/07/2010	2010-9/35

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Administration

R861-1A-23	Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202	33313	NSC	01/28/2010	Not Printed
R861-1A-42	Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401	33637	NSC	05/27/2010	Not Printed
R861-1A-43	Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207	33231	AMD	01/21/2010	2009-24/90

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R865-6F-19	Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	33860	NSC	08/25/2010	Not Printed
R865-6F-27	Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202	33693	AMD	08/12/2010	2010-12/58
R865-6F-28	Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63-38F-401 through 63-38F-414	33643	NSC	05/27/2010	Not Printed

R865-6F-29	Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	33861	NSC	08/25/2010	Not Printed
R865-6F-31	Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	33859	NSC	08/25/2010	Not Printed
R865-6F-36	Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	33858	NSC	08/25/2010	Not Printed
R865-9I-2	Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103	33696	AMD	08/12/2010	2010-12/59
R865-9I-7	Change of Status as Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120	33384	AMD	04/08/2010	2010-5/51
R865-9I-13	Nonresident's share of Pass-Through Entity Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2 and 59-10-1405	33349	AMD	04/08/2010	2010-4/49
R865-9I-13	Nonresident's Share of Pass-Through Entity Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405	33645	AMD	07/08/2010	2010-11/121
R865-9I-13	Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405	33837	AMD	09/23/2010	2010-15/62
R865-9I-17	Time for Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407	33113	AMD	01/21/2010	2009-22/86
R865-9I-21	Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514	33646	AMD	07/08/2010	2010-11/123
R865-9I-42	Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63M-1-413	33694	AMD	08/12/2010	2010-12/61
R865-9I-44	Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118	33348	AMD	04/08/2010	2010-4/50
R865-9I-56	Determination of Amounts Withheld by a Pass-Through entity that is an S Corporation Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405	33351	AMD	04/08/2010	2010-4/53
R865-9I-56	Determination of Amounts Withheld by a Pass-Through Entity that is an S Corporation Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405	33640	AMD	07/08/2010	2010-11/124
R865-12L-5	Place of Sale Pursuant to Utah Code Ann. Section 59-12-207	33350	AMD	04/08/2010	2010-4/54
R865-12L-6	Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207	33352	AMD	04/08/2010	2010-4/55
R865-19S-4	Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107	33848	AMD	09/23/2010	2010-16/56
R865-19S-33	Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103	33849	AMD	09/23/2010	2010-16/57
R865-19S-64	Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103	33850	AMD	09/23/2010	2010-16/58
R865-19S-80	Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103	33852	AMD	09/23/2010	2010-16/59
R865-19S-85	Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104	33853	AMD	09/23/2010	2010-16/61
R865-19S-109	Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	33854	AMD	09/23/2010	2010-16/62

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R865-19S-122	Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104	33857	AMD	09/23/2010	2010-16/66
R865-20T-13	Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302	33691	AMD	08/12/2010	2010-12/62

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R884-24P-33	2010 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301	33794	AMD	09/23/2010	2010-14/29
R884-24P-35	Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102	33697	NSC	06/14/2010	Not Printed
R884-24P-62	Valuation of State Assessed Unitary Properties to Utah Code Ann. Section 59-2-201	33695	AMD	08/12/2010	2010-12/64

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R895-2	Americans With Disabilities Act (ADA) Complaint Procedure	33875	NSC	08/25/2010	Not Printed
R895-3	Computer Software Licensing, Copyright, Control, Retention, and Transfer	33876	NSC	08/25/2010	Not Printed
R895-4	Sub-Domain Naming Conventions for Executive Branch Agencies	33877	NSC	08/25/2010	Not Printed
R895-5	Acquisition of Information Technology	33878	NSC	08/25/2010	Not Printed
R895-7	Acceptable Use of Information Technology Resources	33879	NSC	08/25/2010	Not Printed
R895-8	State Privacy Policy and Agency Privacy Policies	33882	NSC	09/21/2010	Not Printed
R895-9	Utah Geographic Information Systems Advisory Council	33334	5YR	01/20/2010	2010-4/82
R895-9	Utah Geographic Information Systems Advisory Council	33883	NSC	09/21/2010	Not Printed
R895-11	Technology Services Adjudicative Proceedings	33884	NSC	09/21/2010	Not Printed

TRANSPORTATION

Administration

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R912-6	Ports-of-Entry By-Pass Permit Provisions	33675	5YR	05/26/2010	2010-12/75
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R912-10	Requirements for Pilot/Escort Qualified Training and Certification Programs	33820	5YR	07/14/2010	2010-15/72
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R916-3	DESIGN-BUILD Contracts	33396	NSC	03/10/2010	Not Printed
R916-3-8	Acceptable Bid Security; Performance and Payment Bonds	33898	NSC	09/21/2010	Not Printed

R916-4	Construction Manager/General Contractor Contracts	33452	5YR	03/11/2010	2010-7/58
R916-5	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	33649	AMD	07/13/2010	2010-11/125
R916-6	Drug and Alcohol Testing in State Construction Contracts	33587	NEW	06/21/2010	2010-10/154

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R920-51	Safety Regulations for Railroads	33900	NSC	09/21/2010	Not Printed

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R930-6	Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way	33312	NSC	01/28/2010	Not Printed

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R926-8	Public Partnering	33818	NSC	07/28/2010	Not Printed
R926-13	Designated Scenic Byways	33446	NEW	06/21/2010	2010-7/43
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R926-14	Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes	33447	NEW	06/21/2010	2010-7/46

TRANSPORTATION COMMISSION

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R940-1-3	Base Toll Rate and Range for HOT Lanes	33386	AMD	04/07/2010	2010-5/52

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R986-200	Family Employment Program	34061	5YR	09/08/2010	2010-19/80
R986-200-214	Assistance for Specified Relatives	33356	AMD	04/01/2010	2010-4/56
R986-200-235	Unearned Income	33296	AMD	04/01/2010	2010-2/43
R986-200-247	Utah Back to Work Pilot Program (BWP)	33597	AMD	07/01/2010	2010-10/155
R986-300	Refugee Resettlement Program	34062	5YR	09/08/2010	2010-19/81
R986-400	General Assistance	34063	5YR	09/08/2010	2010-19/81
R986-500	Adoption Assistance	34064	5YR	09/08/2010	2010-19/82
R986-600	Workforce Investment Act	34065	5YR	09/08/2010	2010-19/82
R986-700	Child Care Assistance	33017	AMD	01/13/2010	2009-20/34
R986-700	Child Care Assistance	33383	AMD	04/21/2010	2010-5/53
R986-700	Child Care Assistance	34066	5YR	09/08/2010	2010-19/83
R986-700-714	CC Payment Method	33295	AMD	04/01/2010	2010-2/44
R986-800	Displaced Homemaker Program	34067	5YR	09/08/2010	2010-19/83
R986-900	Food Stamps	34068	5YR	09/08/2010	2010-19/84
R986-900-902	Options and Waivers	33412	AMD	05/01/2010	2010-6/24
R986-900-902	Options and Waivers	33599	AMD	07/01/2010	2010-10/157

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R994-205	Exempt Employment	33522	5YR	03/31/2010	2010-8/66
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R994-406-203	Waiver of Recovery of Nonfault Overpayments	33355	AMD	04/01/2010	2010-4/62
R994-406-401	Claimant Fraud	33799	NSC	07/26/2010	Not Printed
R994-508-306	Reconsideration of a Decision of the Board	33868	NSC	08/25/2010	Not Printed

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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	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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<u>accelerated learning</u> Education, Administration	33234	R277-711-4	NSC	01/04/2010	Not Printed
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<u>acceptable use</u> Technology Services, Administration	33879	R895-7	NSC	08/25/2010	Not Printed
<u>access</u> Environmental Quality, Drinking Water	33495	R309-545	5YR	03/22/2010	2010-8/54
<u>access to information</u> Administrative Services, Archives Technology Services, Administration	33320 33872	R17-7-3 R895-1	AMD NSC	05/17/2010 08/25/2010	2010-3/12 Not Printed
<u>accidents</u> Natural Resources, Parks and Recreation	33724	R651-223	5YR	06/08/2010	2010-13/147
<u>accounts</u> Money Management Council, Administration	34141	R628-4	5YR	10/06/2010	Not Printed
<u>accounts receivable</u> Administrative Services, Debt Collection	33564 33778	R21-3 R21-3	NSC NSC	07/01/2010 07/26/2010	Not Printed Not Printed
<u>accreditation</u> Education, Administration	33746	R277-505-4	AMD	08/09/2010	2010-13/66
<u>achievement tests</u> Education, Administration	33748	R277-604-1	AMD	08/09/2010	2010-13/69
<u>adjudicative procedures</u> Commerce, Securities	33016	R164-18-6	AMD	02/02/2010	2009-20/23
<u>adjudicative proceedings</u> Commerce, Administration	33150 33616	R151-46b R151-46b	AMD AMD	01/07/2010 07/12/2010	2009-23/7 2010-11/46

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	33667	R151-46b-5	AMD	07/22/2010	2010-12/4
	33781	R151-46b-11	NSC	07/26/2010	Not Printed
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	34106	R15-3	5YR	09/21/2010	2010-20/66
	33437	R15-4	NSC	03/29/2010	Not Printed
	34107	R15-4	5YR	09/21/2010	2010-20/67
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<u>administrative offset</u>					
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	33778	R21-3	NSC	07/26/2010	Not Printed
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	33862	R655-14-4	NSC	08/25/2010	Not Printed
	33619	R655-14-14	NSC	05/27/2010	Not Printed
<u>administrative procedure</u>					
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<u>administrative procedures</u>					
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	33475	R309-115	5YR	03/22/2010	2010-8/42
	33828	R309-115	NSC	07/28/2010	Not Printed
	33484	R309-300	5YR	03/22/2010	2010-8/46
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	33483	R309-405	5YR	03/22/2010	2010-8/49
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	33611	R477-12	AMD	07/01/2010	2010-10/135
	33613	R477-15	AMD	07/01/2010	2010-10/139
	33770	R477-15-1	AMD	08/09/2010	2010-13/96
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Natural Resources, Parks and Recreation	33808	R651-101	5YR	07/01/2010	2010-14/63
	33408	R651-101-1	AMD	04/21/2010	2010-6/16
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	33818	R926-8	NSC	07/28/2010	Not Printed
	33446	R926-13	NEW	06/21/2010	2010-7/43
	33625	R926-13	NSC	06/21/2010	Not Printed
	33904	R926-13	AMD	10/11/2010	2010-17/109
	33447	R926-14	NEW	06/21/2010	2010-7/46
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	33859	R865-6F-31	NSC	08/25/2010	Not Printed
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	33837	R865-9I-13	AMD	09/23/2010	2010-15/62
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	33646	R865-9I-21	AMD	07/08/2010	2010-11/123
	33694	R865-9I-42	AMD	08/12/2010	2010-12/61
	33348	R865-9I-44	AMD	04/08/2010	2010-4/50
	33351	R865-9I-56	AMD	04/08/2010	2010-4/53
	33640	R865-9I-56	AMD	07/08/2010	2010-11/124
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	33265	R156-79	AMD	02/08/2010	2010-1/14
	33679	R156-80	AMD	07/22/2010	2010-12/5
	33638	R156-83	NEW	07/08/2010	2010-11/99
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	33793	R162-2c-203	AMD	08/23/2010	2010-14/9
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