

UTAH STATE BULLETIN

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Nancy L. Lancaster, Editor

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NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between February 1, 2003, 12:00 a.m., and February 14, 2003, 11:59 p.m. are included in this, the March 1, 2003, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least March 31, 2003. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through June 29, 2003, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

Commerce, Real Estate
R162-6-1
 Improper Practices.

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE No.: 26025
 FILED: 02/04/2003, 12:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Real Estate Commission recently amended this rule to reduce risk for licensees acting as dual agents. After the rule went into effect, real estate agents and brokers vigorously protested the need for the changes. The Real Estate Commission decided instead to amend the former rule to require disclosure of any ownership of realty involved in a transaction in which a licensee participates, and to reinstate that former rule as amended.

SUMMARY OF THE RULE OR CHANGE: The rule change clarifies the language of the portion of the rule that has been in existence for many years and deletes the additions to the rule that were made effective on August 31, 2002.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: If the recent rule change that is now to be repealed had educated licensees and caused them to act more appropriately in dual agency situations, the Division may have realized a small savings in investigative costs that will not be realized if the recent amendments to the rule are repealed. That there may or may not have been savings is speculative, however, and the amount of any such potential savings cannot be accurately quantified by the Division.
- ❖ LOCAL GOVERNMENTS: This rule does not affect local government, and therefore there is no anticipated cost or savings.
- ❖ OTHER PERSONS: Real estate agents and brokers believe that they will make more money if the recent additions to the rule are repealed because they will not have to share commissions with another brokerage if someone in their own brokerage is a principal in a real estate transaction being handled by the brokerage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because recent additions to the rule are being repealed, there will be no compliance costs to licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no negative impact on business. Agents and brokers may net larger commissions on certain transactions.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R162. Commerce, Real Estate.

R162-6. Licensee Conduct.

R162-6-1. Improper Practices.

6.1.1. False devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, [or] lease or rent any real property as a principal, [either directly or indirectly,] without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. For the purposes of this rule, [A] a licensee will be considered to be a [principal for the purposes of this rule]"principal in the transaction" if he: a) is himself the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee. [-is an owner, officer, director, partner, member, or employee of an entity which is a principal in the transaction. In the case of a licensee who is a stockholder but who is not an officer, director or employee of a corporation which is a principal in the transaction, the licensee will be considered to be a principal for the purposes of this rule if he owns more than 10% of the stock of the corporation.

~~6.1.3.1 A licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the licensee has an ownership interest, no matter how small, in a property which the buyer offers to purchase. A licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the seller in the transaction.~~

~~6.1.3.2 A licensee may not represent or attempt to represent the seller in a transaction as a seller's agent or as a limited agent if: a) the licensee is the buyer in the transaction; b) the licensee has any ownership interest in an entity that is the buyer in the transaction; or c) the licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the buyer in the transaction.~~

~~6.1.3.3 To avoid a potential breach of fiduciary duty or a conflict of interest, any existing listing agreement with the licensee's brokerage must be terminated prior to or at the time the licensee, or any entity in which the licensee is an officer, director, partner, member, employee, or stockholder, contracts to purchase the property that is the subject of the listing agreement.]~~

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee.

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2 If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:

(a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and

(b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.

6.1.5.6 If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.5.9 If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records.

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees must not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee.

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. Unprofessional conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on his own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. Token gifts. A licensee may give a gift valued at \$50 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. Referral fees from lenders. A licensee may not receive a referral fee from a lender or a mortgage broker.

6.1.11. Failure to have written agency agreement. To avoid representing more than one party without the informed consent of all parties, principal brokers and licensees acting on their behalf shall have written agency agreements with their principals. The failure to define an agency relationship in writing will be considered unprofessional conduct and grounds for disciplinary action by the Division.

6.1.11.1. A principal broker and licensees acting on his behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency.

6.1.11.2. A principal broker and licensees acting on his behalf who represent a buyer shall have a written buyer agency agreement with the buyer defining the scope of the agency.

6.1.11.3. A principal broker and licensees acting on his behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.16.3.1.

6.1.11.3.1 A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction.

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

(b) notify the listing brokerage that sub-agency is requested;

(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and

(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.

6.1.11.5. A principal broker and licensees acting on his behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.

6.1.11.6. A principal broker and licensees acting on his behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.

KEY: real estate business

~~August 21, 2002~~ 2003

Notice of Continuation June 7, 2002

61-2-5.5

some small savings to those State agencies that employ or use the services of appraisers.

❖ LOCAL GOVERNMENTS: There is the same potential impact on local government agencies as State agencies.

❖ OTHER PERSONS: Other persons who hire appraisers may realize a small savings by being able to employ a State-Licensed Appraiser to perform appraisals instead of hiring a State-Certified Appraiser.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for appraisers. State-Licensed Appraisers will now be able to perform appraisals on a higher transaction value without additional education and examination costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no negative impact on business. Licensed appraisers will be permitted to appraise higher value properties.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Ted Boyer Jr., Executive Director

▼ ————— ▼

Commerce, Real Estate

R162-105

Scope of Authority

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26024

FILED: 02/04/2003, 11:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division has been notified that the current rule is not consistent with the Appraiser Qualification Criteria of the federal Appraisal Foundation.

SUMMARY OF THE RULE OR CHANGE: The rule is corrected to provide that the authority of a licensed appraiser is \$250,000 in a complex transaction and \$1,000,000 in a non-complex transaction.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Since the proposed rule change liberalizes the types of appraisals that may be performed by the State-Licensed category of appraiser, which is a lower level category than a State-Certified Appraiser, there may be

R162. Commerce, Real Estate.

R162-105. Scope of Authority.

R162-105-1. Scope of Authority.

105.1 Transaction value. "Transaction value" means:

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

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

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

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units

having a transaction value of less than [~~\$250,000~~]\$1,000,000 and complex one to four residential units having a transaction value of less than \$250,000.

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

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

105.3 Unclassified Individuals.

105.3.1 Unclassified individuals who have not yet accumulated 100 experience points and who have not successfully completed the education required for licensure may perform the following duties under the direct supervision of a state-licensed or state-certified appraiser: typing an appraiser's research notes; typing an appraisal report; accompanying an appraiser on an inspection visit to a property; assisting an appraiser in measuring a property; taking photographs of specific properties selected and inspected by the appraiser; performing routine calculations; and obtaining copies of assessment records, deeds, maps, and data from real property data bases relating to properties selected by the appraiser.

105.3.1.1 The unclassified individual may accumulate the first 100 experience points with each duty listed in the following table being worth 20% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1. or 104-18.2. not to exceed the maximum number of points awarded for each property. Applicants must have experience in at least five of the following categories and no more than one-third of the experience can come from any one of the following categories.

- (a) type an appraiser's research notes - 20% of total points
- (b) type an appraisal report - 20% of total points
- (c) accompany an appraiser on an inspection visit - 20% of total points
- (d) assist an appraiser in measuring property - 20% of total points
- (e) take photographs of specific properties selected and inspected by the appraiser - 20% of total points
- (f) perform routine calculations - 20% of total points
- (g) obtain copies of assessment records, deeds, maps and data from real property databases relating to properties selected by the supervising appraiser - 20% of total points

105.3.1.2. Unclassified individuals who have not yet accumulated 100 experience points and who have not successfully completed the education required for licensure may not participate in: selecting comparables for an appraisal assignment; making adjustments to comparables; drafting an appraisal report; and, except when working in the presence of a state-licensed or state-certified appraiser, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, or measuring a property.

105.3.2. Unclassified individuals who have accumulated 100 experience points and have successfully completed at least 30 hours of the education required for licensure may act in the capacity of an appraisal "trainee" under the direct supervision of a state-licensed or state-certified appraiser. A "trainee" is permitted to have more than one supervising appraiser.

105.3.2.1. An appraiser "trainee" may, under the direct supervision of a state-licensed or state-certified appraiser, participate in selecting comparables for an appraisal assignment, participate in making adjustments to comparables, draft appraisal reports, and when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure a property.

105.3.2.2. The unclassified individual who is a "trainee" may accumulate the experience points with each duty listed in the following table being worth 33.3% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1. or 104-18.2. not to exceed the maximum number of points awarded for each property. "Trainee" experience must be earned in at least three of the following categories and no more than one-third of their experience can come from any one of the following categories.

- (a) participate in selecting comparables for an appraisal assignment - 33.3% of total points
- (b) participate in making adjustments to comparables - 33.3% of total points
- (c) draft appraisal reports - 33.3% of total points
- (d) when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure the property - 33.3% of total points

105.3.3. All experience points cannot be earned in one 12-month period. For applicants for licensure, a maximum of 300 points will be credited for any one 12-month period. Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application. Applicants who believe the Experience Points Schedule does not adequately reflect their experience may refer to Section 104-17.

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

105.3.5. A classified appraiser who supervises an unclassified individual shall be responsible for the training and direct supervision of the unclassified individual.

105.3.5.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report.

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

- (a) Type of property;
- (b) Address of appraised property;
- (c) Description of work performed;
- (d) Number of work hours;
- (e) Signature and state license/certification number of the supervising appraiser.

105.3.6. The unclassified individual shall maintain a separate appraisal log for each supervising appraiser.

105.4. Term of Revocation or Surrender.

105.4.1 Unless otherwise ordered by the Board, any appraiser whose appraiser certification, license, or registration has been revoked or suspended by the Board, or who has surrendered a

certification, license, or registration as a result of an investigation by the Division, may not serve as an unclassified appraiser for a period of five years after the date of the revocation or surrender, nor may a licensed or certified appraiser employ or supervise him during that period in the activities permitted unclassified persons.

KEY: real estate appraisal
~~[November 15, 2000]~~2003
 61-2b

▼ ————— ▼

Human Services, Aging and Adult Services

R510-106

Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 26046
 FILED: 02/14/2003, 16:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment awards carryover funds based on senior needs. This rule amends the distribution of minimum percentages for Title III and State dollars. This change also changes the numbering to be consistent with Administrative Rule's preferred numbering system.

SUMMARY OF THE RULE OR CHANGE: This rule amends the distribution of minimum percentages for Title III and State dollars. This change also changes the numbering to be consistent with Administrative Rule's preferred numbering system.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-3-101

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no cost or savings impact to state budgets. The Federal funds to be distributed are constant.
- ❖ **LOCAL GOVERNMENTS:** There is no cost or saving impact to local governments. The Federal funds to be distributed are constant. The amount of money received by counties and associations of government (AOG) remain the same, but the distribution percentages change.
- ❖ **OTHER PERSONS:** There is no cost or savings impact to other persons. The Federal funds to be distributed are constant.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is anticipated. This amendment does not change the criteria to qualify for the program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have no effect on local businesses but is simply a way of realigning the percentage of certain services within the Older Americans Act.

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

HUMAN SERVICES
 AGING AND ADULT SERVICES
 Room 325
 120 N 200 W
 SALT LAKE CITY UT 84103-1500, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sally Anne Brown or Lee Ann Whitaker at the above address, by phone at 801-538-8250 or 801-538-3915, by FAX at 801-538-4395 or 801-538-4395, or by Internet E-mail at sabrown@utah.gov or lwhitaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Helen Goddard, Director

R510. Human Services, Aging and Adult Services.
R510-106. Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance.

R510-106-1. General Principles.

~~[(A)]~~(1) In accordance with the (OAA), as amended in ~~[1987]~~2000, the following general principles apply to setting minimum percentages which must be spent for Access, In-Home, and Legal Assistance:

~~[(+)]~~(a) In-Home, Access, and Legal Assistance are priority services.

~~[(2)]~~(b) "The minimum percentage is intended to be a floor, not a ceiling. AAAs are encouraged to devote additional funds to each of these service areas to meet local needs." (Source: House of Representatives Conference Report regarding ~~[this]~~the 1987 Amendment to the Older Americans Act.)

~~[(3)]~~(c) AAAs should be given flexibility to administer their programs at the local level.

~~[(4)]~~(d) The minimum percentage should be applied to both Title IIIB and State Service Dollars.

~~[(B)]~~(2) The minimum percentages shall be established at: ~~[8%]~~10% for Access Services, ~~[8%]~~10% for In-Home Services, and ~~[2%]~~5% for Legal Assistance.

~~(C)~~(3) The minimum percentages will be based upon Title III B dollars and State Service dollars that are distributed by formula to the AAAs.

~~(D)~~(4) The minimum percentages will be reviewed ~~[by the State by June 1, 1989]~~ on an annual basis.

R510-106-2. Criteria for Approval of Title IIIB Priority Services Waiver.

~~(A)~~(1) AAAs which do not plan to fund a Title IIIB priority category of service at the required minimum percentage must request a waiver. In order to be approved, the waiver request must demonstrate to the State that the need for the service is adequately met through other means.

~~(4)~~(a) The waiver request must include:

~~(a)~~(i) ~~[Category(ies)]~~Categories of service to be waived, i.e. access, in-home, or legal.

~~(b)~~(ii) Extent of waiver requested, i.e. request to provide zero funding or request to provide some funding, but not at the minimum percentage required.

~~(c)~~(iii) Justification that services provided in the planning and service area for the waiver category are sufficient to meet the need. Justification should include: types of services in the category available in the planning and service area, funding sources and amounts available, history of service usage, needs assessment data, sources of information, efforts to publicize services, comments from providers of services, waiting lists, etc.

~~(d)~~(iv) Documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, including:

~~(e)~~(A) ~~[Copy(ies)]~~Copies of publicity ~~[for]~~to conduct a hearing.

~~(f)~~(B) Lists of individuals and agencies notified.

~~(C)~~ Lists of individuals or service providers who requested a hearing.

~~(v)~~ If a hearing is requested, documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, will be needed, including:

~~(A)~~ copies of publicity for to conduct a hearing;

~~(B)~~ lists of individuals and agencies notified; and

~~(C)~~ lists of individuals or service providers who requested a hearing.

~~(g)~~(vi) Record of public hearing.

~~(B)~~(2) In order for the Area Agency on Aging (AAA) to demonstrate public ~~[input into the waiver request through a public hearing]~~ knowledge about ability to request a hearing, it is recommended that the AAA:

~~(4)~~(a) Publicize the hearing in advance so that interested parties can arrange to attend.

~~(2)~~(b) Use publicity means that will enable potentially interested parties to be aware of the ability to request a hearing, to have sufficient background to understand the purpose of the hearing, and to be able to testify at the hearing if desired. In addition to a legal notice in the classified section of a newspaper, letters, flyers, larger newspaper articles or other similar announcements are recommended for the purpose of granting a waiver.

~~(3)~~(c) Notify interested parties of the ability to request a hearing, such as those individuals or groups specified below:

~~(a)~~(i) All Categories of Service: Clients, potential clients, senior advocates, local advisory council members, designated state advisory council member for the area, representatives or relatives of clients, local elected officials, Department of Human Services, agency staff, and State Division of Aging and Adult Services staff, etc.

~~(b)~~(ii) Access Services: Information and referral providers, public or private transportation providers, outreach staff.

~~(e)~~(iii) In-Home Services: Chore provider agencies, home health agencies, local health departments, homemaker provider agencies, friendly visitor and telephone reassurance agencies ~~[and/or]~~ volunteers, homemakers, personal care aides, and home health aides.

~~(d)~~(iv) Legal Assistance: Legal Services Developer, Utah Legal Services Corporation, representatives of the Utah Bar Association.

KEY: elderly

~~[1988]~~2003

Notice of Continuation November 1, 2002

62A-3-101 et seq.

Natural Resources, Parks and Recreation

R651-408

Off-Highway Vehicle Education Curriculum Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26026

FILED: 02/06/2003, 09:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rules for Off-Highway Vehicle (OHV) curriculum standards have changed over the past few years and several of the existing rules date back to 1987. This rule amendment updates information regarding non-resident OHV education certificate fees; changes the reimbursement for OHV education safety instructors from \$3 to \$6 per student; and adds required safety equipment for OHV riders.

SUMMARY OF THE RULE OR CHANGE: Safety requirements and costs have changed during the past few years. The OHV coordinator has changed and the existing laws and regulations need to be updated, and this rule amendment will accomplish that purpose.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-22-31, 41-22-32 and 41-22-33.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be a \$5 increase for taking the OHV Safety and Education program brought about by the elimination of the "non-resident off-highway vehicle education certificate fee, thereby requiring all OHV Safety and Education program students to pay \$10 as is now required of local students. This rule brings the fees in line with Section 41-22-33.

❖ LOCAL GOVERNMENTS: Local government has no part in this program as it is run strictly by State Parks and Recreation on state land; and therefore there would be no impact to local government.

❖ OTHER PERSONS: OHV Safety Education program instructors will be making \$3 more for each OHV Safety Education program student, bringing their reimbursement fee to \$6. The total amount will be determined by the number of students entering the class.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No one will be allowed to take the OHV Safety Education Program unless they pay the \$10 fee for the course. Instructors will collect \$6 for each OHV Safety Education Program student to defray their costs for teaching the course. Compliance costs would depend on costs incurred by the division during the safety program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department finds no evidence that the proposed change will have a measurable impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-408. Off-Highway Vehicle Education Curriculum Standards.

R651-408-1. Student Requirements.

1. A student under 18 years old attending any off-highway vehicle education course shall be required to have a parent or adult responsible for that student attend at least the first hour of any classroom session, and all of any applicable skills module.
2. All students shall submit to the course instructor a Parental Consent and Waiver form signed by their parent or legal guardian during any off-highway vehicle education class.
3. All students participating in the skills module shall wear the following safety equipment: a properly fitted and fastened, safety-rated helmet, designed for motorized use, safety proven eye protection, gloves, and long pants and sturdy shoes or boots that cover the foot and ankle.
4. A student must receive a grade of 70 percent or better on the written test before participating in a corresponding skills module. A

score of 70 percent is also necessary on the skills module in order to be certified.

5. A student may challenge the written test or any of the skills modules by passing the appropriate test.

6. A student failing any test or skills module may be retested no sooner than seven days after the initial test. If the student fails the retest of a skills module, then he must retake the entire module.

7. A student participating in the skills module must be able to straddle the machine, with a slight bend to his knees, while his feet are on the foot rests.

R651-408-2. Safety Instructor Requirements.

1. An off-highway vehicle safety instructor shall teach a minimum of two off-highway vehicle courses or skills modules per year to maintain instructor certification.

R651-408-3. Off-Highway Vehicle Education Fees.

1. The fee for the off-highway vehicle education course is \$10.
2. The fee to challenge the off-highway vehicle education course by taking the knowledge and skills test is \$5.

~~[3. The non-resident off-highway vehicle education certificate is \$5.~~

] [4]3. A duplicate off-highway vehicle education certificate is \$2.

R651-408-4. Volunteer Certified Safety Instructor Reimbursement.

Volunteer certified OHV safety instructors will be reimbursed \$5 for each student they train and test in the Division's OHV Education Program.

KEY: off-highway vehicles
~~July 4, 2000~~ **March 18, 2003**
Notice of Continuation June 29, 1999

41-22-31
 41-22-32
 41-22-33



Natural Resources, Parks and
 Recreation
R651-410
 Off-Highway Vehicle Safety Equipment

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE No.: 26028
 FILED: 02/06/2003, 09:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The sand dune areas of Utah are becoming more and more populated as more people are riding Off-Highway Vehicles (OHV) for recreation. Because of the rolling nature of sand dunes, visibility of other OHVs is restricted and by requiring a safety flag on each OHV, it will provide an important means of increasing the visibility of OHV's on the dunes, making it safer for OHV riding.

SUMMARY OF THE RULE OR CHANGE: To make OHV recreation safer for OHV riders by requiring a safety flag on OHV's ridden on the sand dunes at Coral Pink Sand Dunes, Big Sand Mountain Special Recreation Management Area and Little Sahara Special Recreation Management area.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-22-31

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This is a new rule regarding safety, and displaying a safety flag on any OHV at Coral Pink Sand Dunes, Big Sand Mountain Special Recreation Management Area and Little Sahara Special Recreation Management Area.

Therefore, there would be no aggregate anticipated cost or savings to the State budget.

❖ LOCAL GOVERNMENTS: There will be no aggregate anticipated cost or savings to local government as this is a rule for state safety to require a safety flag when using OHV's at sites stated above.

❖ OTHER PERSONS: The only cost anticipated would be the purchase of a safety flag for display on the OHV and that cost would be very minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Anyone who does not comply with the safety flag requirement could be cited by a law enforcement officer, which includes park rangers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: We have no evidence that the proposed change will have any impact on business.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-410. Off-Highway Vehicle Safety Equipment.

R651-410-1. Safety Flags Required on designated Sand Dunes.

A. Coral Pink Sand Dunes.

Beginning at the junction of Hancock Road and San Springs Road, thence west along Hancock Road to Yellowjacket Road; thence south along Yellowjacket Road to Coral Pink Sand Dunes State Park South Boundary Road. Thence south along the South Boundary Road to the Utah-Arizona state line. Thence east along the Utah-Arizona state line to the east side of Moquith Mountain. Thence north along the east side of Moquith Mountain to Sand Springs Road. Thence north along Sand Springs Road to the junction of Hancock Road and Sand Springs Road.

B. Big Sand Mountain Special Recreation Management Area - Sand dunes located within that portion of Washington County bounded by the following: Starting at the intersection of the county-maintained Washington Dam road and the main jeep road that runs east of and parallel to Warner Ridge. Thence south along the main jeep road to its intersection with the Warner Valley road. Thence south and east along the Warner Valley road to its intersection with the Hurricane Cliffs road. Thence north along the Hurricane Cliffs road to the north township line of Township 43 South, Salt Lake Meridian. Thence west along the township line and public land boundary to the southeast corner of Section 31, Township 42 South, Range 13 West, Salt Lake Meridian. Thence north along the section line and thereafter following the boundary of the proposed San Hollow Recreation Area to the principal OHV access road off the northwest corner of the recreation area. Thence northwest along the principal OHV access road to the Washington Dam road. Thence west along the Washington Dam road to the beginning.

C. Little Sahara Special Recreation Management Area - Sand dunes located within that portion of Juab County lying within the fenced boundary of the Little Sahara Recreation area.

KEY: parks, off-highway vehicles

April 1, 2003

41-22-31

41-22-32

41-22-33

Natural Resources, Parks and Recreation **R651-602** Aircraft and Powerless Flight

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 26029

FILED: 02/06/2003, 09:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is intended to allow seaplanes access to designated lakes and reservoirs in Utah. The State Division of Aeronautics supports the request made by the Seaplane Pilot's Association, and decided to do some research. This rule is filed after the research was completed. Prior to this action, aircraft could not land or take off within the state park system except at designated landing areas. This rule allows emergency aircraft and other pre-approved aircraft to land. It will allow aircraft to land and take off from designated lakes and reservoirs, i.e. Deer Creek, Jordanelle, Rockport, Starvation and Willard Bay according to the listed times of year. May 1 to Sept. 30 - anytime except Friday, Saturday, Sunday, or during a holiday period, (holiday period being the day of the holiday and the day after; from October 1 to April 30, aircraft can land any time. The aircraft cannot land or take off anytime it cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during such takeoff or landing.

SUMMARY OF THE RULE OR CHANGE: This rule is made to accommodate this special use of seaplanes in the state and those who use seaplanes for taking off and landing at Deer Creek, Jordanelle, Rockport, Starvation and Willard Bay state parks.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Costs to operate this system would be borne by the Seaplane Pilot's Association and therefore the State budget will have no aggregate anticipated cost or savings.

❖ **LOCAL GOVERNMENTS:** The safety on certain waters of the State of Utah is the responsibility of Utah State Parks rangers. This is a state program, and local government is not will not be affected.

❖ **OTHER PERSONS:** Persons who will be use seaplanes will have to obtain the necessary licenses, registration or other documents required by the Seaplane Association. Any cost for these items would be the responsibility of the operator of the seaplane.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs of operating and flying the seaplanes will be those of the operator of the vessel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department finds no evidence that the proposed change will have any impact on business.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.**R651-602. Aircraft and Powerless Flight.****R651-602-1. Landing or Taking Off.**

The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

R651-602-2. Air Delivery or Pickup.

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

R651-602-3. Powerless Flight Launching and Landing.

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

R651-602-4. Lakes and Reservoirs Designated as Open.

The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.

Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists: (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

R651-602-6. Aircraft on the Water Operation Requirements.

A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

KEY: parks

[~~October 4, 1999~~ April 1, 2003

Notice of Continuation June 29, 1999

63-11-17(2)(b)

Public Service Commission,
Administration
R746-350
Application to Discontinue or Curtail
Telecommunications Services

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26047

FILED: 02/14/2003, 16:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide a framework for companies exiting the Utah telecommunications market.

SUMMARY OF THE RULE OR CHANGE: This rule will require companies to provide notice of their intent to curtail services or exit the market. It outlines the steps companies must take to inform the Commission, customers, other telecommunications carriers, and the public in general of the change in their operations in Utah's telecommunications services markets.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-3-1, 54-3-3, 54-4-1, and 54-4-4

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Commission and the Division of Public Utilities are already doing much of the activity envisioned to be undertaken by state agencies through the rule. The rule will not result in additional costs for state agencies. By establishing an orderly process for providers to exit service markets, some, but not substantial, savings could be realized through the operation of the rule.

❖ **LOCAL GOVERNMENTS:** The rule does not require any action from local governments; there should be no costs or savings affect on them.

❖ **OTHER PERSONS:** Some telecommunications service providers have exited Utah markets without providing notice to their customers. The rule's requirement that notice be given to customers will result in a cost to generate and deliver the notices containing the required information to customers. Total costs will be dependant upon the number of customers to be notified by exiting providers. It is anticipated the compliance with the notice and information requirements would be less than \$1.00 per customer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The potential compliance costs for exiting providers is considered to be less, at times significantly less, than the economic costs that arise when customers and suppliers face, from their position, the unanticipated, unplanned exit or curtailed services of a telecommunications provider. The Commission believes that compliance costs for this rule would not be substantial, as a well run service provider would be expected to be able to meet the rule's information and notice requirements in its normal and usual customer service and business operations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will have some fiscal impact upon exiting providers to the extent that, without the rule, they would not provide any or limited prior notice of the alteration or cessation of their services to customer in Utah. Under the rule, customers of exiting providers will have adequate opportunity to arrange replacement services in an orderly fashion, without the disruption and fiscal consequences of unanticipated and unplanned service disruption. Statutory requirements require the Commission to consider the economic effects and impacts of the manner in which telecommunications companies provide service in Utah and ensure that service, or the cessation of service, is done in a just and reasonable manner.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Stroud at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at bstroud@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Barbara Stroud, Paralegal

**R746. Public Service Commission, Administration.
R746-350. Application to Discontinue or Curtail Regulated
Telecommunications Services.
R746-350-1. Purpose and Authority.**

A. Authorization -- Section 54-4-1 provides that the Public Service Commission shall have the power to regulate utilities and to supervise their business operations. Section 54-3-1 requires that the terms and conditions of the provision of service be just and reasonable.

B. Purpose -- This rule is intended to address situations where a telecommunications corporation has determined to reduce all or some of its existing services or stop providing them entirely to customers in a Utah service area as part of changes in the corporation's business plan or course of operations. An example would be a provider which undertakes actions to end service to its Utah customers as it prepares to exit the Utah market and no longer operate in the state. No telecommunications corporation may discontinue or alter the provision of a telecommunications service to existing customers in a service area, or portions thereof, without first complying with this rule or receiving an exemption from the Commission.

R746-350-2. Definitions.

Terms -- The meaning of the terms used in this rule shall be consistent with their general usage in the telecommunications industry, Title 54 of the Utah Code or as defined below:

A. "Commission" means the Public Service Commission of Utah.

B. "Division" means the Division of Public Utilities.

C. "Exiting Provider" means a telecommunications corporation that seeks to curtail, reduce, or decrease telecommunications services to its existing customers in a service area, or portion thereof, located in Utah or to stop, or eliminate providing a telecommunications service to its customers in a service area, or portion thereof, located in Utah. It does not include a telecommunications corporation that curtails, reduces, decreases, stops, or eliminates telecommunications service as a result of the customer's request or pursuant to the provision of R746-240-6. It does not include a temporary change in the provision of service that may arise from maintenance, repair or failure of a telecommunications corporation's equipment or facilities.

D. "Intended Date of Discontinuance" means the date upon which an exiting provider intends to alter or discontinue providing a telecommunications service pursuant to this rule.

E. "Replacement Provider" means a telecommunications corporation that undertakes providing the telecommunications service to customers of the exiting provider after the exiting provider is permitted to alter or stop provisioning the telecommunications service.

R746-350-3. Application and Notice.

A. Application -- Unless subject to R746-350-4(F) for unique facilities, a telecommunications corporation shall file an application with the Commission and the notices identified hereafter not less than 50 days prior to the Intended Date of Discontinuance.

B. Notices -- A telecommunications corporation shall provide written notice to the following:

1. the Division;
2. each administrator of all 911, or like, service agencies which have coverage in the geographic areas that will be affected if the exiting provider's application is approved;
3. each of its customers that will be affected by the change in or elimination of service, including customers that are telecommunications corporations;
4. telecommunications corporations providing the exiting provider with essential facilities or services or unbundled network elements (UNEs) if they are part of or used to provide telecommunications services to the exiting provider's affected customers;
5. telecommunications corporations providing the exiting provider with resold telecommunications services, if resold service is part of the telecommunications services provided to the exiting provider's affected customers;
6. the national number administrator, when applicable, authorizing the release of all assigned telephone numbers to other telecommunications companies and releasing all unassigned telephone numbers to the number administrator.

R746-350-4. Application and Notice Contents.

A. Application -- The application to the commission required by R746-350-3.A must include:

1. applicant's name, complete mailing address, including street, city, state, and zip code, telephone number, e-mail address, and the

names under which the applicant is providing telecommunications service in Utah;

2. name, mailing address, telephone number and e-mail address of person to contact for questions about the application;

3. identification of the telecommunications services, either facilities-based or resale, to be discontinued or curtailed, and the associated service territory or portion thereof proposed for discontinuance or curtailment;

4. the Intended Date of Discontinuance, which shall not be sooner than 50 days after the date on which the provider files the application with the Commission;

5. acknowledgment that by signing the application, the applicant and its successors understand and agree that:

a. filing of the application does not, by itself, constitute authority to discontinue or curtail any service;

b. if the application is granted, a discontinuance or curtailment is conditional upon fulfillment of conditions established by Commission order; and

c. if any portion of the application is found to be false or to contain material misrepresentations, any order granting authority to discontinue or curtail may be deemed null and void, upon Commission Order;

6. an affidavit signed by an officer or principal of the company attesting under penalty of perjury that the contents of the application are true, accurate, and correct.

7. a copy of the notices required in this rule;

8. a detailed outline of the procedures the telecommunications corporation will pursue to ensure continuation of service for its affected customers;

9. explanation of reasons for the curtailment or discontinuance of service.

B. Notice to the Division -- The notice to the Division required in R746-350-3(B)1 shall be a copy of the Application submitted to the Commission.

C. Notice to 911 -- The notice to the 911 programs required in R746-350-3(B)(2) must, at a minimum, include the name of the exiting telecommunications company, and for each category of service, provide the date each telecommunications service is planned to be altered or discontinued, and the number of customers, described by exchange or by city and county for each telecommunications service being altered or discontinued.

D. Notice to Customers -- The notice to customers required in subsection R746-350-3(B)(3) must, at a minimum, include the date telecommunications service is planned to be altered or discontinued and information on how to contact the exiting provider by telephone in order to obtain service information needed to establish service with another provider, and to explain how customers may receive a refund on any unused service. In addition:

1. Beginning at least 30 days before cessation of voice service, the exiting provider must provide a list of alternate providers, including contact numbers and addresses for those alternate providers.

2. Beginning at least 15 days before cessation of voice service, the exiting telecommunications company must provide oral notice of cessation of service at the beginning of each call originated in Utah, including the date of cessation of service and a number to call for more information; and

3. The exiting provider must provide information to consumers via its customer service number outlining the procedure for obtaining refunds and continue to provide this information for 60 days after the date of alteration or discontinuance of service.

E. Notice to LECs -- The notice to LECs required in R746-350-3(B)(4) must provide all necessary information to change subscribers to a different carrier including the intended date of alteration or discontinuance, and identifying the essential services or facilities or UNE components in relationship to the service information provided to the customer when that information differs from the LEC's identification information of the services as billed to the exiting telecommunications company. For example, if the LEC identifies a UNE loop with a circuit identification number, the exiting telecommunications company must provide the LEC with the customer telephone number assigned to the LEC's UNE loop circuit identification number. The notice must also include telephone contact information to enable the LEC or new provider to obtain UNE service and circuit identification information needed to establish service for a customer who will no longer receive service from the exiting provider.

1. LECs shall provide the information in the notices required in this subsection to a subsequent service provider upon a request authorized by the customer.

2. LECs may not use the information in the notices required in this subsection to initiate marketing efforts unless the information is first made available to other telecommunications corporations for their marketing efforts.

F. Additional Notice for Unique Facilities -- Notwithstanding the requirements set forth in R746-350-3(A) and R746-350-4(E), if an exiting provider has ownership or control of the only facilities readily available to provide service to its customers so that another telecommunications corporation would either need to acquire control of those facilities or install its own facilities in order to serve the customers of the exiting provider, then the following shall be required:

1. The exiting provider shall provide notice to other LECs at least 120 days prior to its Intended Date of Discontinuance. The notice shall grant other LECs 40 days to respond indicating a LEC's interest in obtaining the facilities and their transfer.

2. The exiting provider shall file an application to discontinue or curtail service with the Commission at least 75 days prior to the intended date of discontinuance.

3. The Commission shall determine the timing of any further proceedings, including the timing of further notices.

4. In addition to the forgoing requirements, the telecommunications corporations shall cooperate fully with each other in their investigation of the facilities and manner of providing service during the transition period after which another telecommunications corporation may provide service to the exiting provider's customers.

G. Notice to Suppliers -- The notice to suppliers of services resold by the exiting provider, required in R746-350-3(B)(5) must, at a minimum, include:

1. the Intended Date of Discontinuance for the telecommunications services which will be altered or stopped, and identification of the resold service element components in relationship to the service information provided to the customer when the information differs from the supplier's identification information regarding the services as billed to the exiting telecommunications company;

2. telephone contact information to enable the supplier or a new provider to obtain underlying service and circuit identification information needed to establish comparable replacement service for a customer who will no longer receive service from the exiting provider. Telecommunications companies that are suppliers,

pursuant to this subsection, shall provide the information in the required notices to the subsequent provider upon a request authorized by the customer.

H. Notice to the National Number Administrator -- The notice required in R746-350-3(B)(6) to the national number administrator authorizing the release of all assigned telephone numbers to the succeeding providers shall include identification of all working telephone numbers assigned to customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers will be available for reassignment. The exiting provider shall authorize the release of each individual assigned customer telephone number to subsequent providers selected by the customer.

R746-350-5. Customer Transition.

A. Customer Transition -- When an exiting provider is transitioning customers to a replacement provider, the following conditions shall apply:

1. The exiting provider shall cooperate fully with the replacement provider in transitioning the services of the customers to the replacement provider. This cooperation shall include:

a. providing information to the replacement provider regarding its customers' services and the facilities, easements and other contract or property rights used by the exiting provider to provide the services, as permitted by law and

b. transferring facilities, easements and other contract or property rights used by the exiting provider in providing the services to the customers to the replacement provider to the extent agreed upon.

2. A replacement provider, selected by a customer to provide service, shall attempt in good faith to provide service in accordance with its tariff or price list and within its normal provisioning intervals, unless the provisioning intervals cannot be met because of the lack of physical facilities necessary to serve the customer.

3. If the replacement provider selected by a customer determines that notwithstanding its best efforts it will be unable to provide service to the customer by the exiting provider's Intended Date of Discontinuance, the replacement provider shall immediately notify the Commission, the Division, the customer and the exiting provider. If the customer is unable to select another available replacement provider, the exiting provider shall continue to provide service until the earlier of:

a. the date on which a replacement provider is able to provide service, or

b. a date ordered by the Commission.

4. If the exiting provider has satisfied all requirements of this rule, and if a replacement provider is willing and able to provide service by the Intended Date of Discontinuance or the date determined by order of the Commission, it is anticipated that the exiting provider will not be required to continue service to its customers after the later of the Intended Date of Discontinuance or the date determined by order of the Commission. Nothing in this rule, however, shall be construed as shielding the exiting provider from any legal liability to its customers or any other person or entity, whether the liability is grounded in contract, tort or otherwise, including any obligation for any interconnection payment required to maintain service to the exiting provider's customers.

5. The exiting provider and replacement provider shall be exempted from Section 54-8b-18 and R746-349-5 and may undertake the necessary steps to change the exiting provider's customer's service provider without being considered to have

engaged in slamming; provided that replacement provider may not change a customer's preferred interexchange carrier (PIC) designation, other than a designation of the exiting provider as PIC or local PIC, without customer authorization.

6. Neither the exiting provider nor the replacement provider shall be considered to have misused customer proprietary network information as a result of providing and receiving that customer information as is necessary to establish and provide service pursuant to this rule.

7. Nothing in this rule shall require the replacement provider:
a. to provide service other than the service which it has indicated to the customers of the exiting provider that it would provide, or

b. to provide the service at rates or on terms other than those published in the replacement provider's tariffs or price lists.

8. Nothing in this rule obligates the replacement provider to undertake any obligation of the exiting provider. To the contrary, unless expressly agreed in writing or ordered by the Commission, it shall be presumed that the replacement provider has not undertaken any obligation of the exiting provider.

R746-350-6. Liability and Reimbursements for Noncompliance.

A. Failure to Comply -- When the exiting provider fails to comply with the terms of this rule, regardless of the cause for noncompliance, including involuntary bankruptcy, the following shall apply:

1. If the Commission determines that an LEC, a telecommunications service supplier, UNE/essential facility or service provider, or replacement provider incurred excess costs, in whole or in part, as a result of the exiting provider's failure to comply with this rule, that portion of the excess costs attributable to the exiting provider's failure to comply shall be recoverable by the Commission from the exiting provider, including from any bond posted by the exiting provider pursuant to R746-349-3(A)(2), in addition to any other fines or penalties that may be applicable.

2. Within 90 days after the effective date of this rule, all telecommunications corporations that were required to post a bond pursuant to R746-349-3(A)(2) shall provide the Commission with proof that such bond, or another bond of an equal amount, is available to satisfy any obligation of the telecommunications corporation that might arise under the terms of this rule, in addition to remaining available as security for other obligations as originally required. Telecommunication corporations that received a previous exemption from the bond requirement shall submit a bond, for the purposes of this rule, within 90 days after the effective date of this rule, or seek an additional exemption from this rule. A telecommunications corporation seeking a certificate from the Commission after the effective date of this rule shall post a bond as directed by the Commission sufficient to satisfy any obligation of the telecommunications corporation that might arise under the terms of this rule.

KEY: exiting provider, replacement provider, telecommunications, services

2003

54-4-1

54-3-1



Regents (Board Of), Administration
R765-136
 Language Proficiency in the Utah
 System of Higher Education (USHE).

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26034

FILED: 02/11/2003, 10:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides for the use of languages other than English for communications with non-English speakers, to promote English proficiency, and to encourage language training in the Utah System of Higher Education (USHE).

SUMMARY OF THE RULE OR CHANGE: While English is the official language of Utah and the sole language of the government, Utah colleges and universities and the Utah Higher Education Assistance Authority (UHEAA) may use languages other than English for communications with non-English speakers pursuant to Utah Code 63-13-1.5. Languages other than English may be used to explain educational opportunities, policies and procedures, training and other related programs, while promoting the principle that non-English speaking children and adults should become able to read, write, and understand English as soon as possible. Foreign language training, as well as English as a Second Language, shall continue to be supported at System institutions and UHEAA. The use of languages other than English is permissive and not required.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-13-1.5 and 53B-2-106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Promoting English proficiency while using languages other than English to communicate with non-English speakers at USHE institutions will enhance the education, productivity, and employment of such persons living in Utah. Anticipated costs or savings to the state budget are undetermined, but it is believed that improved employment opportunities for those served will outweigh minimal costs. The use of languages other than English is permissive and not required.

❖ **LOCAL GOVERNMENTS:** Anticipated costs or savings to local government through promoting English proficiency while using languages other than English at USHE institutions to communicate with non-English speakers are undetermined. The use of language other than English is permissive and not required.

❖ **OTHER PERSONS:** Anticipated costs or savings to other persons through promoting English proficiency while using languages other than English at USHE institutions to communicate with non-English speakers are undetermined. The use of language other than English is permissive and not required.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons is undetermined. However, the use of language other than English is permissive and not required by this rule. The support of foreign language instruction and programs in English as a Second Language are ongoing priorities at USHE institutions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Implementation of this rule will only have positive impact on businesses, as increased English proficiency and enhanced language training will enable current non-English speakers to become better employees and/or customers and clients of Utah businesses.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Don A. Carpenter at the above address, by phone at 801-321-7110, by FAX at 801-321-7199, or by Internet E-mail at dcarpenter@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Cecelia H. Foxley, Commissioner

R765. Regents (Board of), Administration.

R765-136. Language Proficiency in the Utah System of Higher Education.

R765-136-1. Purpose.

To provide for the use of languages other than English for communications with non-English speakers, to promote English proficiency, and to encourage enhanced language training in the Utah System of Higher Education.

R765-136-2. References.

2.1. Utah Code 53B-2-106 (Duties and Responsibilities of the President).

2.2. Utah Code 63-13-1.5 (Official State Language).

R136-3. Policy.

3.1. Official State Language - English is the official language of Utah and is the sole language of the government. Pursuant to Utah Code 63-14-1.5 institutions and the Utah Higher Education Assistance Authority (UHEAA) may use languages other than English for communications with non-English speakers in accordance with this rule.

3.2. Communications in Order to Encourage English Proficiency - System institutions and UHEAA may use languages

other than English to establish communications with non-English speakers. These communications may explain educational opportunities and institutional or UHEAA policies and procedures in order to encourage and support participation in institutional and UHEAA education, training and other related programs, including English proficiency training. Such communications shall promote the principle that non-English speaking children and adults should become able to read, write, and understand English as quickly as possible.

3.3. Foreign Language Instruction - System institutions and UHEAA shall continue to emphasize and support foreign language instruction as an integral and important function of Utah higher education.

3.4. English as a Second Language Instruction - System institutions and UHEAA shall support, initiate, continue and expand formal and informal programs in English as a Second Language.

KEY: English proficiency, language proficiency, higher education
2003
53B-2-106
63-13-1.5



Tax Commission, Property Tax
R884-24P-60
Age-Based Uniform Fee on Tangible
Personal Property Required to be
Registered with the State Pursuant to
Utah Code Ann. Section 59-2-405.1

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 26044
FILED: 02/14/2003, 16:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-405.1 imposes an age-based uniform fee on passenger cars and pickups.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment replaces the recently filed 120-day emergency rule. The amendment indicates that the age-based uniform fee due on registration is based on the age of the vehicle on the first day of the registration period for which the vehicle is registered. (DAR Note: A 120-day (emergency) rule that was effective on January 6, 2003, was published in the February 1, 2003, issue under DAR No. 25917.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-405.1

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None. Age-based uniform fees are county revenues.

❖ LOCAL GOVERNMENTS: None. The amendment will leave local government in the position it is in now.

❖ OTHER PERSONS: None. Individuals will pay the fee in effect at the beginning of their registration period for which they are registering.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. Individuals will pay the fee in effect at the beginning of the registration period for which they are registering.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses. This amendment clarifies that the age-based fee paid is the fee in effect for the registration period.

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:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the ~~calendar year~~ age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle;
- or
2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

KEY: taxation, personal property, property tax, appraisals
~~December 9, 2002~~ **2003**
Notice of Continuation April 5, 2002
59-2-405.1



Transportation, Administration **R907-1** Administrative Procedure

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26035

FILED: 02/11/2003, 14:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to reduce the time needed to process appeals.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the date on which an appellant must file documentation in support of his appeal from 10 days after filing an appeal to the date of the appeal and substitutes "presiding officer" for "director" whenever rule refers to the hearing officer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This change would reduce the cost very slightly by eliminating the need to schedule a submission date in a separate letter.

❖ **LOCAL GOVERNMENTS:** Local governments are not covered by this rule, so there would be no affect.

❖ **OTHER PERSONS:** The change would have no fiscal impact on other people since it merely changes the time for submission of documents, not the requirement that they be submitted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs since this amendment merely changes the time for submission of documents, not the requirement that they be submitted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact is anticipated since it merely changes the time for submission of documents, not the requirement that they be submitted.

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

TRANSPORTATION
 ADMINISTRATION
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY UT 84119-5998, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: John R. Njord, Executive Director

R907. Transportation, Administration.

R907-1. Appeal of Departmental Actions.

R907-1-1. General Administrative Procedures.

All applications, Requests for Agency Action, and appeals from Notices of Agency Action shall be processed as informal adjudicative proceedings pursuant to Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), unless another rule specifically designates a proceeding as formal or either party requests conversion to a formal proceeding and the presiding officer decides that conversion is in the public interest and does not prejudice the rights of any party. An evidentiary hearing will be held only for formal adjudicative proceedings. However, nothing in this rule is intended to prohibit the presiding officer from holding a meeting of all parties for purposes of settlement, fleshing out of the issues, oral argument, or presentation of evidence. Adjudicative proceedings are subject to agency review or appeal pursuant to Utah Code Ann. Section 63-46b-12 only when statute or a rule specifically provides for review. This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA). When used in these rules, "director" means Presiding Officer except when used as Executive Director.

R907-1-2. Commencement by department – Notice of Agency Action – Procedures.

(1) An adjudicative proceeding commenced by the department is initiated by a Notice of Agency Action, which the department shall mail or personally deliver to the person or persons against whom the action is proposed to be taken (respondents). UDOT shall publish the Notice of Agency Action if required by statute, any other rule, or the Utah Transportation Commission.

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;

(e) a statement that, if the person requests an appeal of the agency action, the adjudicative proceeding will be conducted informally pursuant to these rules unless either the department or the respondent requests conversion to a formal adjudicative proceeding and the appropriate presiding officer identified in R907-1-3(2) grants the request;

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

(g) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(h) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(i) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;

(j) a statement that the respondent is entitled to agency review if he or she files a Request for Agency Appeal with the initiating division or office within 30 days from the date the Notice is deposited in U.S. Mail or personally served.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by appealing to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.

R907-1-3. Commencement by a member of the public – Complete or Partial Denials of Applications or Requests for Agency Action – Default.

(1) If the Department denies, either completely or in part, an application or Request for Agency Action and that action is subject to agency appeal, the division or office issuing the denial shall send to the applicant a written reply as promptly as possible. The reply should include a brief summary of the reasons for the decision along with a listing of any statutes or rules that were interpreted or relied upon for it, along with UDOT's file or reference number. It shall advise the

applicant of his or her right to request agency review by filing a written request with the initiating division or office within 30 days after issuance of the notice. In addition, the reply shall inform the applicant that his written request for appeal must include any supporting documentation, including legal memoranda, that he or she wishes to be considered. The reply shall constitute the proposed order of the division or office making the decision and shall so indicate on the reply.

If there is no appeal within 30 days, it shall become the final order of the department.

(2) Upon receiving a Request for Agency Appeal, the division or office shall first evaluate it to determine whether it meets the requirements of Utah Code Ann. Section 63-46b-12(1)(b), i.e., whether it is signed, states the grounds upon which review is requested, the relief sought, and stating the date upon which it was mailed. If the request does not meet the statutory requirements, or was received at the division or office after the 30-day appeals period, it shall be returned to the sender with explanation as to the reason for the return. If the request meets the statutory requirements, the division or office shall promptly forward the material and a copy of any relevant material in its files to:

(a) the State Operations Engineer, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the deputy [d]Director, if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Project Development Director or designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves something other than the items listed in Subsections (a), (b), or (c), and a specific appellate procedure is not otherwise specified in these rules or in statute;

(e) the [e]Executive [d]Director or designee, if the action involves something other than the items listed in subsections (a), (b), (c), or (d) and was initiated by Department personnel located at Department headquarters at the Calvin Rampton Complex.

(3) The positions listed above shall be the respective presiding officers. However, either the [e]Executive [d]Director or deputy [d]Director may designate another to act as a substitute. Additionally, when called to preside over adjudicative proceeding that involves access management or has potential "takings" or inverse condemnation implications, the Region Director may designate a group of individuals either to advise on the issue or to take over presiding officer duties. If the Region Director designates a group to take over presiding officer duties, he or she shall appoint:

(a) an odd-numbered group so that any decision will not result in a tie; and

(b) a chairperson.

(4) The person who issued the appealed order may not be included in either of the groups established in paragraph (3). However, the person who issued the decision may be consulted, asked for the reasons underlying his decision, and called as a witness if the proceeding is converted to a formal one.

(4) Absent filing of a timely Request for Agency Appeal, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Request for Agency Action will be dismissed. The department shall either mail a copy of the default order and the dismissal order to the person who requested the action.

(5) If the defaulting party is not the sole requester, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(6) A defaulting party may seek agency appeal of an Order of Default by appealing to the presiding. If the Order of Default was issued by that officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-4. Administrative Appeals -- Procedures.

(1) ~~Upon receiving notice from the division or office of the filing of an appeal either in response to a Notice of Agency Action or a complete or partial denial of an application or Request for Agency Action, the presiding officer shall send a letter to the appellant notifying him or her that the appeal has been received and notifying the appellant of the opportunity to submit further documentation in support of the appeal by a date certain. That date should not be less than 10 days nor more than 20 days after the letter is sent.~~

~~(2)(1)~~ Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, except as otherwise provided by law.

~~(3)(2)~~ Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs, to the person required to decide on review. The person deciding on review may grant either party an extension of time. The decision should be made on the record appearing after the responses have been submitted, but the may meet with the parties, if he or she considers it necessary. This meeting is not a hearing as contemplated under Title 63, Chapter 46b, Utah Administrative Procedures Act.

~~(4)(3)~~ The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

- (a) a designation of the statute or rule permitting or requiring review;
- (b) a statement of the issues reviewed;
- (c) findings as fact as to each of the issues;
- (d) conclusions of law as to each of the issues;
- (e) the reasons for the disposition;
- (f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded;
- (g) the right to judicial review pursuant to Utah Code Ann. Section 63-46b-15 by filing a complaint in district court within 30 days.

R907-1-5. Reconsideration.

(1) Within 20 days after issuance of the final order, any party may request reconsideration, stating the specific grounds upon which relief is requested.

(2) The person filing the request shall mail a copy to each party.

(3) The executive [d]Director, or his designee, shall issue a written order either denying or granting the request. If no order is issued within 20 days, the request shall be considered denied. If the request is granted in any part and a new final order is issued, it shall include the same information listed in R907-1-4, or R907-1-6 if the matter concerned motor carriers.

R907-1-6. Administrative Procedures for Motor Carrier Actions.

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, he or she shall follow the procedures established in R907-1. This proceeding is an informal adjudicative proceeding under Title 63, Chapter 46b, Utah Administrative Procedures Act; therefore, discovery is prohibited, but the administrative hearing officer may issue subpoenas or other orders to compel production of necessary evidence. The Department shall provide the applicant, upon request, information in the agency's files, including records that are part of any investigation unless those records are otherwise made confidential or protected from disclosure.

(2) If the proceeding is converted to a formal adjudicative proceeding and an evidentiary hearing held, the Department's deputy [d]Director may act as the administrative hearing officer. He may also designate another in his stead. At the hearing, the motor carrier shall go first and is burdened to show why the Department's civil penalties should not be assessed. The division shall respond, with the motor carrier being given an opportunity to rebut the division's evidence. If the administrative hearing officer decides doing so will be beneficial to his understanding of the issues, he may allow closing statement or arguments and he may tape the proceedings. The rules of evidence do not apply.

(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

- (a) a designation of the statute or rule permitting or requiring review;
- (b) a statement of the issues reviewed;
- (c) findings as fact as to each of the issues;
- (d) conclusions of law as to each of the issues;
- (e) the reasons for the disposition;
- (f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded;
- (g) the right to judicial review pursuant to Utah Code Ann. Section 63-46b-15 by filing a complaint in district court within 30 days.

R907-1-7. Formal Process and Hearing: Initiation.

(1) If, notwithstanding R907-1-1, the department wishes to initiate an adjudicative proceeding as a formal proceeding, the formal hearing process shall be conducted as follows:

(2) A Notice of Agency Action shall include the following information:

- (a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;
- (b) the department's file number or other reference number;
- (c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;
- (d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;
- (e) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;
- (f) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;
- (g) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;
- (h) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;

(i) A statement that the adjudicative proceeding is to be conducted formally according to the provisions of these Rules and Sections 63-46b-6 to 63-46b-11;

(j) A statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action;

(k) A statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by appealing to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.

R907-1-8. Formal Process and Hearing: Responses.

In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or a representative within 30 days of the mailing date of the Notice of Agency Action that shall include:

- (1) UDOT's file number or other reference number;
 - (2) The name of the adjudicative proceeding;
 - (3) A statement of the relief that the respondent seeks;
 - (4) A statement of the facts; and
 - (5) A statement summarizing the reasons that the relief requested should be granted.
- (6) The response shall be filed with UDOT and one copy shall be sent by mail to each party.

(7) All papers permitted or required to be filed under these rules shall be filed with UDOT and one copy shall be sent by mail to each party.

(8) In the discretion of the Presiding Officer Director, any respondent may be heard without written pleadings or an order of default may be entered pursuant to the Rules below.

R907-1-9. Formal Process and Hearing: Intervention.

(1) Order Granting Leave to Intervene Required. Any person, not a party, desiring to intervene in a formal proceeding shall obtain an order from the presiding officer granting leave to intervene before being allowed to participate. Such order shall be requested by means of a signed, written petition to intervene which shall be filed with UDOT by the time a response is due as prescribed in R907-1-7 and a copy promptly mailed to each party. Any petition to intervene or materials filed after the date a response is due, may be considered by the

presiding officer only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interest are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the presiding officer.

(3) Response to Petition. Any party to a proceeding in which intervention is sought may make an oral or written response to the petition for intervention. Such response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(4) Granting of Petition. The presiding officer shall grant a petition for intervention if he or she determines that:

(a) The petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) The interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(5) Order Requirements.

(a) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) The presiding officer may impose conditions at any time after the intervention.

(d) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation therein, the presiding officer may dismiss the intervenors from the proceeding.

(e) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

R907-1-10. Formal Process and Hearing: Conduct of Hearings.

All hearings before the Presiding Officer Director shall be governed by the following procedures:

(1) Public Hearings. All hearings [~~before the~~] Director shall be open to the public, unless otherwise ordered by the Presiding Officer Director for good cause shown. All hearings shall be open to all parties

(2) Full Disclosure. The Presiding Officer Director shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Director shall use as appropriate guides, the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objection of a party, the Director:

(a) May exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) Shall exclude evidence privileged in the courts of Utah.

(c) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document.

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

(4) Hearsay. Notwithstanding subsection C. above, the Director may not exclude evidence solely because it is hearsay.

(5) Parties Rights. The Director shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(6) Public Participation. The Director may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(7) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(8) Failure to Appear. When a party to a proceeding fails to appear at a hearing after due notice has been given, the Director may enter an order of default in accordance with the Rules described hereinabove.

(9) Time Limits. The Director may set reasonable time limits for the participants of the hearing.

(10) Continuances of the Hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the fault of the party requesting the continuance. The continuance of the hearing may also be made by the request of the Director when in the public interest.

(11) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the Director may, at his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the Director.

(12) Record of Hearing. The Director shall cause an official record of the hearing to be made, at the agency's expense, as follows:

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

(b) The record of the proceedings may also be made by means of a tape recorder or other recording device if the Director determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter. Any party, at its own expense, may have a person approved by the Director prepare a transcript of the hearing, subject to any restrictions that the Director is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be made available at the appropriate UDOT office for use, but may not be taken out of the office. If the party agrees to pay the costs, the Department will make a copy to give to them.

(13) Preserving Integrity. This section does not preclude the Director from taking appropriate measures necessary to preserve the integrity of the hearing.

(14) Summons, Witness Fees and Discovery. The Director may allow appropriate witness fees as provided by statute or rule.

(a) Summons. The Director may issue a summons or subpoena on its own motion, or upon request of a party, shall issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

(b) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the Director may authorize such manner of discovery against another party or person, including the UDOT staff, as may be prescribed by and in the manner provided by the Utah Rules of Civil Procedure.

(c) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by law.

R907-1-11. Formal Process and Hearing: Decisions and Orders.

Decision. The Director shall sign and issue an order that includes:

(1) A statement of the Director's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or on facts officially noted;

(2) A statement of the reasons for the Director's decision;

(3) A statement of any relief ordered;

(4) A notice of the right to apply for reconsideration;

(5) A notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(6) The time limits applicable to any reconsideration or review.

(7) Preparation of Order. The Director may direct the prevailing party to prepare proposed findings of fact, conclusions of law and an order consistent with the requirements of this rule, which shall be completed within ten days of the direction, unless otherwise instructed by the Director. Copies of the proposed findings of fact, conclusions of law and order shall be served by the prevailing party upon all parties of record prior to being presented by the Director for signature. Notice of objection thereto shall be submitted to the Director and all parties of record within ten days of service.

(8) Entry of Order. The Director shall sign the order and cause the same to be entered and indexed in books kept for that purpose. The order shall be effective on the date of issuance, unless otherwise provided in the order. Upon the petition of a person subject to the order and for good cause shown, the Director may extend the time for compliance fixed in its order.

(9) Evaluation of Evidence. The Director may use his expertise, technical competence, and specialized knowledge to evaluate the evidence.

(10) Hearsay. No finding of fact that was contested may be based solely on hearsay evidence.

(11) Interim Orders. This section does not preclude the Director from issuing interim orders to:

(a) Notify the parties of further hearings;

(b) Notify the parties of provisional rulings on a portion of the issues presented; or

(c) Otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(12) Notice. The Director shall notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law shall be delivered or mailed to each party.

R907-1-12. Formal Process and Hearing: Reconsideration and Modification of Existing Orders.

(1) Time for Filing. Within 20 days after the date that a final order is issued in the formal adjudicative process, any party may file a written request for reconsideration, rehearing, stating the specific grounds upon which relief is requested.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) Mailing Requirement. The request for reconsideration shall be filed with the Director. One copy shall be sent by mail, within three days of said filing, to each party by the person making the request.

(4) Contents of Petition. A petition for reconsideration shall set forth specifically the particulars in which it is claimed the Director's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Director failed to consider certain evidence, it shall include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

(5) Response to Petition. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition no later than ten days from the filing of the petition. A copy of such responses shall be mailed to the petitioner by the person so responding on the date the response is filed.

(6) Action on the Petition. The Director is authorized to act upon the petition for reconsideration. If the Director does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied. The Director may, by written order, set a time for hearing on said petition or deny the petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Director shall be treated as a new Request for Agency Action for the purposes of these Rules. Such request for modification or amendment shall include as directly affected persons all parties to the previous adjudicative proceeding and their successors in interest.

R907-1-13. Declaratory Rulings.

(1) Petition for Declaratory Orders. Any person may petition the Director for a declaratory order on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code within the jurisdiction of UDOT, which relate to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved.

(2) Not Subject to Declaratory Rulings. The Director shall not issue a declaratory ruling if:

(a) The person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) There would be substantial prejudice to the rights of a person who would be a necessary party unless that person consents in writing to the determination of the matter by a declaratory proceeding.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of R907-1-9 hereinabove.

(4) Forms of Rulings. After receipt of a petition for a declaratory order, the Director may issue a written order:

(a) Declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or

(b) Decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order shall contain:

(a) The names of all parties to the proceeding on which it is based;

(b) The particular facts on which it is based; and

(c) The reasons for its conclusion.

(6) Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the petitioner and the Director agree in writing to an extension, if the Director has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R907-1-14. Emergency Orders.

Emergency orders will be issued in accordance with the following guidelines: notwithstanding the other provisions of these Rules, the Director or any member of the Transportation Commission is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Transportation Commission, or such shorter period of time as shall be prescribed by statute.

(1) Prerequisites for Emergency Order. The following must exist to allow an emergency order:

(a) The facts known to the Director or Commission member or presented to the Director or Commission member show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) The threat requires immediate action by the Director of Commission member.

(2) Limitations. In issuing its Emergency Order, the Director or Commission member shall:

(a) Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Director or Commission member's utilization of emergency adjudicative proceedings;

(c) Give immediate notice to the persons who are required to comply with the order; and

(d) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Director shall commence a formal adjudicative proceeding before the Director in accordance with R907-1.

R907-1-15. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies in accordance with Section 63-46b-14, prior to seeking judicial review.

(2) In any adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.

R907-1-16. Deadline for Judicial Review.

A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63, Chapter 46b.

R907-1-17. Judicial Review of Formal Adjudicative Proceedings.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63-46b-16 through 63-46b-18.

R907-1-18. Civil Enforcement.

(1) Agency Action. In addition to other remedies provided by law and other Rules of the Transportation Commission or UDOT, the Commission or UDOT may seek enforcement of an order by seeking civil enforcement in the district courts subject to the following:

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

(b) Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

(c) The action may request, and the court may grant, any of the following:

- (i) Declaratory relief;
- (ii) temporary or permanent injunctive relief;
- (iii) any other civil remedy provided by law; or
- (iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

(a) Until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or UDOT, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(b) If the Commission or UDOT has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant;

(c) If a petition for judicial review of the same order has been filed and is pending in court.

R907-1-19. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to UDOT. This waiver provision may not be construed to prohibit a finding of default as defined in these rules.

R907-1-20. Construction.

The Utah Administrative Procedures Act described in Title 63, Chapter 46b or any other federal, state statute, or federal regulation shall supersede any conflicting provision of these Rules. It is the Department's intent that, where possible, the provisions of these rules be construed to be in compliance with those superseding provisions.

**KEY: administrative procedures, enforcement (administrative)
October 2, 2002**

Notice of Continuation January 30, 2002

**63-46b-1 through 20
72-1-102**

▼ ————— ▼

**Workforce Services, Employment
Development
R986-700-703
Client Rights and Responsibilities**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26042

FILED: 02/14/2003, 15:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment is to make sure that clients do not experience an interruption in child support payments.

SUMMARY OF THE RULE OR CHANGE: If a client has a child support collection case open in another state and applies for child care assistance in Utah, Department interpretation of current rules would require the client have the case closed in the other state and open a case with ORS in Utah. Although it does not happen often, this can result in an interruption of income to the client. If the client is cooperating with the other state agency and receiving child care through that state's efforts, leaving the collection responsibility with the other state will insure that child support income is not interrupted. Under this proposed amendment, if the other state is collecting child support for the client, the client will not be required to cooperate with ORS in the collection of child support.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-310

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be no costs or savings to the State budget because this is a federally funded program.

❖ **LOCAL GOVERNMENTS:** This rule does not affect local government so there will be no costs or savings to local governments.

❖ **OTHER PERSONS:** There will be no costs or savings to any persons. The Department is leaving the child support collection responsibility with the other state if child support is being collected there. It happens in only about 5 cases per year. Since the child support is being collected on a regular basis and there are so few cases per year, it is not an additional expense to the other state or a savings to ORS.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) In addition to the requirements for reporting other material changes that might affect eligibility, outlined in R986-100-113, a client is responsible for reporting a change in the client's need for child care, a change in the client's child care provider, and a change in the amount a provider charges for child care, to the Department within 10 days of the change.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) Any client receiving any type of CC who is not receiving full court ordered child support must cooperate with ORS in obtaining child support from the absent parent. Child support payments received by the client count as unearned income. If a

client's case was closed for failure to cooperate with ORS it cannot be reopened until ORS notifies the Department that the client is cooperating or it is determined on appeal that the client is cooperating. The requirements of this section will be satisfied if the client is cooperating with the appropriate agency in another state and can provide the Department with verification of the client's continuing cooperation with the other state. If the other state agency has not been successful in collecting child support, the Department may require that the client request that the client's case be closed in the other state and that the client cooperate with ORS.

(9) All clients receiving CC must cooperate in good faith with the Department in establishing paternity unless there is good cause for not cooperating.

(10) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(11) The Department may also release general information to a provider regarding the status of or a delay in the payment of CC.

(12) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client. The Department cannot replace child care payments which have been aged off the horizon card.

KEY: child care
[July 1, 2002]2003
35A-3-310

Workforce Services, Employment Development **R986-700-709** Employment Support (ES) CC

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26043

FILED: 02/14/2003, 15:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment is offered to clarify current Department practice.

SUMMARY OF THE RULE OR CHANGE: Child care assistance is only available for actual time spent in approved activities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-310

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the State budget because this is a federally funded program.

❖ LOCAL GOVERNMENTS: This rule does not affect local government so there will be no costs or savings to local governments.

❖ OTHER PERSONS: There will be no costs or savings to any persons because the Department has always followed this practice by policy. It is being added to the rule to better inform our clients and staff of what kind of activities child care can support. Child care will not be decreased or increased as a result of this rule change because we have always followed this policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

**R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-709. Employment Support (EC) CC.**

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(a) If the household has only one parent, the parent must be employed a minimum of 15 hours per week.

(b) If the family has two parents, CC can be provided if:

(i) one parent is employed a minimum of 35 hours per week and the other parent is employed a minimum of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(ii) one parent is employed and the other parent cannot work or provide child care because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The individual claiming incapacity must provide proof, by way of a report signed by a medical doctor, doctor of osteopath or licensed/certified psychologist, which states that:

(A) the parent cannot work; and

(B) the incapacity prevents the parent from caring for a child; and

(C) the incapacity is expected to last at least 30 days.

(2) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard.

(3) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

**KEY: child care
~~July 1, 2002~~2003
35A-3-310**

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends March 31, 2003. At its option, the agency may hold public hearings.

From the end of the waiting period through June 29, 2003, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Occupational and
Professional Licensing
R156-22
Professional Engineers and
Professional Land Surveyors Licensing
Act Rules

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 25763
Filed: 02/04/2003, 12:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a January 14, 2003, rule hearing and further Division and Board review, a few minor wording changes are being made to the proposed rule.

SUMMARY OF THE RULE OR CHANGE: Section 205, paragraph (2) - changed Exam to Examination(s). Section 501: provided the correct titles for professional engineer, professional structural engineer and professional land surveyor throughout this section. (DAR Note: proposed amendment published 1/1/2003)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-22-101 and Subsections 58-1-106(1) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No additional costs are anticipated by the Division except for those previously identified in the December 9, 2002, proposed rule filing.
- ❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. Therefore, there is no anticipated cost or savings impact to local governments.
- ❖ OTHER PERSONS: No additional costs or savings are anticipated by the Division except for those previously identified in the December 9, 2002, proposed rule filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs or savings are anticipated by the Division except for those previously identified in the December 9, 2002, proposed rule filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No additional fiscal impact is foreseeable as a result of this amendment that was not already addressed in the prior rule filing regarding continuing education submitted on December 9, 2002. Ted Boyer, Executive Director

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG

160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Douglas Vilnius at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at dvilnius@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing. R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.

R156-22-205. Examination Requirements for Licensure as a Professional Structural Engineer.

(1) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

- (a) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;
 - (b) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and
- ([d]) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(2) An applicant must have successfully completed the experience requirements set forth in Subsection R156-22-203(2) and make application before being eligible to sit for the NCEES Structural Examination(s).

R156-22-501. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period commencing on January 1 of each even numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

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

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

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

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

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

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

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering [and] or professional land surveying;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication;

(d) a maximum of six hours per two year period may be recognized for active professional practice of professional engineering, professional structural engineering and professional land surveying; and

(e) a maximum of six hours per two year period may be recognized for active membership in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering and professional land surveying.

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

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

**KEY: engineers, surveyors, professional land surveyors, professional engineers
2003**

Notice of Continuation January 13, 2003

58-22-101

58-1-106(1)

58-1-202(1)(a)

▼ ————— ▼

Human Services, Aging and Adult Services **R510-401** Utah Caregiver Support Program

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 25557

Filed: 02/14/2003, 16:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To comply with public comment received from original November 15, 2002, bulletin publication, a copy of which is attached.

SUMMARY OF THE RULE OR CHANGE: Policy governing the statewide implementation of the Caregiver Support Program has been amended in order to comply with federal law enacted as PL 106-501. (DAR Note: The original proposed repeal and reenact upon which this change in proposed rule is based was published in the November 15, 2002, issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-3-104(4)(5); PL 106-501, Title III E of Older Americans Act PL 89-73; and 42 USC 3001 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The state will be providing support services with federal and state-appropriated dollars for individuals who wish to be cared for at home. The number of clients and type of services is not known at this time. Therefore, no state budgetary impact is anticipated.

❖ LOCAL GOVERNMENTS: The state will be providing support services with federal and state-appropriated dollars for individuals who wish to be cared for at home. The number of clients and type of services is not known at this time. Therefore, no local budgetary impact is anticipated.

❖ OTHER PERSONS: Some persons may be impacted by limitation on time or maximum expenditures per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This program is administered by state/local governments who have monitoring and compliance responsibilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This program allows for frail elderly to be care for in their own homes. The program will purchase services and equipment from local services and businesses. Caregiver support groups will help to reduce stress levels and allow caregivers to be more productive in the workplace. The result may be a positive fiscal impact for private businesses.

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

HUMAN SERVICES
AGING AND ADULT SERVICES
Room 325
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sally Anne Brown or Lee Ann Whitaker at the above address, by phone at 801-538-8250 or 801-538-3915, by FAX at 801-538-4395 or 801-538-4395, or by Internet E-mail at sabrown@utah.gov or lwhitaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Helen Goddard, Director

R510. Human Services, Aging and Adult Services.

R510-401. Utah Caregiver Support Program (UCSP).

R510-401-1. Utah Caregiver Support Program Purpose.

~~[(1) The purpose of the Utah Caregiver Support Program is: (a) to provide information, assistance, support, caregiver training, and counseling to:~~

- ~~— (i) caregivers of adults who are 60 years of age or older;~~
- ~~— (ii) caregivers who are 60 years of age or older and who are caring for persons with mental retardation or related developmental disabilities; and~~
- ~~— (iii) grandparents or other older individuals who are relative caregivers of a child who is under 18 years of age; and~~

~~— (b) to provide respite and supplemental services to caregivers of adults who are 60 years of age or older and who are unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision.]~~ The Utah Caregiver Support Program is created under authority of the Older Americans Act of 1965 as amended in 2000 (PL 89-73) Part E - National Family Caregiver Support Program (NFCSP).

The purpose of the program is to provide support services including information and assistance, counseling, support groups, respite and other home and community-based services to family caregivers of frail older individuals. The program also recognizes the needs of grandparents who are caregivers of grandchildren and other older individuals who are relative caregivers of children who are 18 years of age and under.

Operation of the program is a joint responsibility of the State Division of Aging and Adult Services and local Area Agencies on Aging (AAA). Funds are distributed by formula (R510-100-1) to local AAAs.

R510-401-2. Definitions.

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency or Area Agency on Aging (AAA)" means the agency designated by the Division of Aging and Adult Services (DAAS) to coordinate and provide services for a defined geographical area.

(3) "Agency Director" means the director of the Agency.

~~[(4) "Caregiver or Family Caregiver" means an adult individual, regardless of relationship to the care receiver, who is an informal provider of care to an individual who is 60 years of age or older. This definition excludes agency and privately paid supportive service providers.~~

](4) "Caregiver or Family Caregiver" means an adult family member, or another adult individual, who is an informal provider of in-home and community care to an older individual who is:

(a) 60 years of age or older; or is a

(b) caregiver 60 years of age or older who is caring for persons with mental retardation or related developmental disabilities; or is a (c) grandparent or older individual who is a relative caregiver of a child not more than 18 years of age.

This definition excludes agency and privately-paid supportive service providers.

~~[(5) "Care Plan" means a written plan which contains a description of the needs of the caregiver and the care recipient, and the services and goals necessary to meet those needs.~~

](6)(5) "Care Receiver" means an adult 60 years of age or older who receives assistance from, or is dependent upon, another for care and is:

(a) unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(b) due to a cognitive or other mental impairment, requires substantial supervision.

~~[(7)(6) "Companion Services" means non-medical, basic supervisory services which are provided to the eligible care receiver in his home on a short-term, intermittent basis. Companion Services provide respite to a caregiver who is caring for eligible care receivers who do not require any personal care assistance, medical assistance, or housekeeping services during the time when companion services are provided.~~

~~[(8)(7) "Child" means an individual who is under]not more than 18 years of age.~~

~~[(9)(8) "Counseling, Support Groups, or Caregiver Training" means provision of advice, guidance, and education about options and methods of caregiving to provide support to caregivers in an individual or group setting.~~

~~[(10)(9) "Director" means the director of the Division of Aging and Adult Services (DAAS), Utah Department of Human Services[(DAAS)].~~

~~[(11)(10) "Division" means the Division of Aging and Adult Services (DAAS), Utah Department of Human Services.~~

~~[(12)(11) "Formal Resources" means an entity or individual that provides services for a fee or reimbursement.~~

~~[(13)(12) "Grandparent or Older Individual who is a Relative Caregiver" means a grandparent or step-grandparent of a child, or a [legal]-relative of a child by blood or marriage, who is 60 years of age or older and:~~

~~(a) lives with the child;~~

~~(b) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and,~~

(c) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

~~[(44)](13)~~ "Informal Resources" means family, friends, neighbors, community organizations or others who offer resources and support ~~[but]and~~ are not assigned by formal agencies or organizations, irrespective of any payment received.

~~[(15)]~~ "Intermittent or Short Term Services" means services that can be accessed for a six month duration during any one twelve-month period, and require a reassessment. A two week maximum of continuous institutional facility respite services will be allowed during the six month duration and will not be considered intermittent services.

~~[(46)](14)~~ "Multifaceted Systems" means a variety of systems of support for the caregiver including but not limited to those described in the required five service categories of the ~~[National Family Caregiver Support Program ("NFCSP")]~~(NFCSP), Title III of the Older Americans Act, as amended in 2000.

~~[(47)](15)~~ "National Family Caregiver Support Program or NFCSP" is the federal program enacted as P. L. 106-501, Title III of the Older Americans Act, P. L. 89-73, 42 USC Section 3001 *et seq.*, as amended in 2000.

~~[(48)](16)~~ "Relief" means ease from or lessening of discomfort, anxiety, fear, stress, or burden.

(19) "Respite or Respite Care" ~~[means temporary supports or living arrangements for an eligible care receiver on behalf of the caregiver on an intermittent basis to relieve the daily stress and demands of caring for the functionally impaired adult with the purpose of renewing the caregiver's strength and capacity in that role. Respite or Respite Care may be provided hourly, daily, overnight, or on weekends and may be provided by paid or volunteer staff. The term includes, but is not limited to, companion, companion services, homemaker and personal care services, adult day health care services, short term inpatient care in a licensed nursing facility, or a residential health care facility. Temporary respite may not be provided by the twenty percent (20%) maximum supplemental services funds. Neither can temporary respite be provided on an on-going basis.]~~is considered to be temporary, substitute supports or living arrangements to provide a brief period of relief or rest for caregivers as outlined in the service plan. It can be in the form of in-home respite, adult day care respite, or institutional respite for an overnight stay on an intermittent, occasional, or emergency basis. Respite can be provided for a caregiver for no more than 12 consecutive months from the date of enrollment and shall not exceed \$1,500 for that time period. If either condition is met, the client must come off of the program and then reapply. Temporary respite may not be provided by the twenty percent (20%) maximum supplemental services funds.

(17) "Service Plan" means a written plan which contains a description of the needs of the caregiver, the care recipient, and the services and goals necessary to meet those needs.

~~[(20)](18)~~ "Supplemental Services" means other services to complement the care of caregivers, on a limited basis. Supplemental services shall serve to maximize the support of caregivers and shall be flexible, adaptable, and responsive to the needs of the individual caregiver or care receiver where ever they reside in the State of Utah. Services provided under supplemental services shall not fall into other categories defined in the UCSP or the ~~[National Family Caregiver Support Act]~~NFCSP. Necessity for supplemental services shall be specified in the ~~[care]service~~ plan goals. Reimbursement shall include the purchase, installation, removal, replacement, or repair of approved items or services. The case manager will

document in the ~~[ease]client~~ file all funding resources explored and reasons alternative funding cannot be accessed. Items or services exceeding \$250 per purchase must be prior approved by the ~~[Division]Agency Director~~ based on a formal written request by the ~~[Agency]Case Manager~~ or designee documenting the determination of need and estimated cost. ~~[Response for prior approval from the Division will be within ten (10) working days.]~~A copy of said approved waiver request will be sent to the Division. A copy will be placed by the Agency in the client file.

(a) "Supplies or Equipment" means durable and non-durable goods purchased under supplemental services to provide support and assistance to caregivers in their caregiving responsibilities. Reimbursement shall include the purchase of supplies, and the purchase, installation, removal, replacement or repair of approved ~~[supplies and]~~ equipment.

(b) "Modifications or durable adaptive aids and devices" purchased as supplemental services shall be one-time purchases to provide support and assistance to caregivers in their caregiving responsibilities. Minor modifications of homes shall facilitate the ability of older individuals to remain at home or provide for the safety of the care receiver. Adaptive aids and devices shall assist the caregivers helping care receivers to perform normal living ~~[skills]activities~~, and shall include the cost of any necessary installation fitting, adjustment, repair, and training. Adaptive aids and devices may be fabricated by a professional if the care receiver needs specialized aids and devices.

(c) "Legal, Financial, or Placement Services" purchased as supplemental services shall provide support and assistance to caregivers in their caregiving responsibilities. Services will provide the caregiver with legal, financial, and placement advice, counseling, and representation by an attorney, certified financial advisor, ~~[or a professional]~~or other person acting under the supervision of an attorney, certified financial advisor, or placement professional. ~~[Necessity for legal, financial, or placement services shall be specified in the care plan goals.]~~

~~[(21)](19)~~ "Waiver" means an intentional release in writing by the Division, as authorized in the rules, from a program limitation or criterion ~~[that is authorized in writing by the Division]~~included in these rules.

R510-401-3. Eligibility for Services.

(1) Services listed in Section R510-401-5 are available to caregivers, grandparents and older individuals who are relative caregivers.

(2) Respite care and Supplemental Services are available to caregivers who are:

(a) caregivers of adults 60 years of age or older

(b) caregivers 60 years of age or older caring for persons with mental retardation or related developmental disabilities; or are

(c) grandparents or older individuals who are a relative caregiver of a child not more than 18 years of age.

(3) To provide respite and supplemental services to caregivers of adults 60 years of age or older, the care receiver must be unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical caring or supervision.

(4) The DAAS-approved assessment tool shall be completed to establish eligibility for Respite and Supplemental Services as stated in Section R510-401-5(3).

R510-401-[3]4. Responsibilities of the Division.

- (1) Pursuant to UCA 62A-3-104, the Division shall:
- establish a funding formula for the distribution of the funds as approved by the Board;
 - monitor, and at the request of the Area Agency on Aging, consult and assist in UCSP;
 - provide training opportunities;
 - define minimal documentation and client assessment standards; and
 - approve or disapprove waivers and exceptions.

R510-401-[4]5. Program Content.

(1) Each Area Agency on Aging [~~and any entity with which it contracts~~] shall provide a multifaceted system of caregiver support services for caregivers and, if funded, for grandparents or older individuals who are relative caregivers [~~to include:~~

~~— (2) The Area Agency on Aging and any entity with which it contracts shall develop multifaceted systems of caregiver support services to include:~~

- information to caregivers about available services;
- individual, one-on-one assistance to caregivers in gaining access to services in the form of information and assistance or case management. Assistance may include but is not limited to such activities as phone contact [~~and~~] home visits [~~, mailings, and flyers~~];
- individual counseling, support groups, and caregiver training to [~~caregivers to~~] assist the caregivers in making decisions and solving problems relating to their caregiving roles;
- respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and
- supplemental services, on a limited basis, to complement the care provided by caregivers.

~~— (3) Services shall be provided to:~~

- ~~all adult caregivers of an individual 60 years of age or older requesting services, who meet the eligibility requirements; and~~
- ~~grandparents or older individuals who are relative caregivers, if funded, defined as a grandparent or step-grandparent of a child, or a relative of a child by blood or marriage, who is 60 years of age or older.~~

~~— (2) The Area Agency on Aging shall use the DAAS-approved assessment tool to determine eligibility for respite and supplemental services and said tool shall be kept in the client file.~~

~~— (3) Prior to receiving respite or supplemental services the Area Agency on Aging shall develop a written service plan including goals and objectives for the caregiver, which shall be kept in the client file.~~

(4) The Area Agency on Aging shall ensure the provision of the full range of caregiver support services in the community by coordinating its activities with the activities of other community agencies and voluntary organizations providing supportive services to family caregivers and, if funded, grandparents or older individuals who are relative caregivers of children.

(5) Older Americans Act information and services shall be provided to family caregivers in a direct and helpful manner. In cases where caregiver support programs already exist within the community, coordination of these programs and the UCSP is essential to maximize the dollars available for family caregivers and avoid duplication of services.

(6) To assure coordination of caregiver services in the planning and service area, the Area Agency on Aging shall convene a minimum of one joint planning meeting annually with other local providers who currently provide support services to family

caregivers. As practical, the Area Agency on Aging shall coordinate the activities under this program with other community agencies and voluntary organizations providing services to caregivers. [~~Funding under this program gives the Agency an opportunity to advocate with other provider agencies to expand and enhance existing services to better meet the needs of family caregivers. Effort should be made to integrate or closely coordinate the UCSP and the Alzheimer Family Caregiver Support Program, preferably with other Title III programs.~~]

(7) Funds allocated on an annual basis under the UCSP for services provided by an Area Agency on Aging shall be expended as follows:

(a) Information to caregivers about available services: the Area Agency on Aging may not use less than [~~five~~]three percent of the funds allocated under the UCSP to provide these services.

(b) Assistance to caregivers in gaining access to the services: the Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(c) Individual counseling, organization of support groups, and caregiver training to caregivers to assist the caregivers in making decisions and solving problems relating to their caregiving roles: The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

~~(d)~~(d) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities: The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

~~(e)~~(e) Supplemental services, on a limited basis, to complement the care provided by caregivers: The Area Agency on Aging may not use more than twenty percent of the funds allocated under the UCSP to provide these services.

~~(f) The Area Agency on Aging shall spend no more than 10% of funds on services provided to grandparents and other individuals who are relative caregivers of children.~~

R510-401-5. Eligibility for Services.

~~— (1) Services shall be provided to family or informal caregivers, and, as funding becomes available, to grandparents providing care to a child as described in R510-401-2(14).~~

~~— (2) Priority shall be given to individuals who provide care and support to individuals who are 60 years of age or older and who are in greatest social and economic need (with particular attention to low income older individuals), those residing in a rural or geographically isolated area, and older individuals who provide care and support to persons with mental retardation or related developmental disabilities.~~

~~— (3) The DAAS approved assessment tool shall be completed to establish eligibility for Respite and Supplemental Services.~~

R510-401-6. Client Vouchers.

~~— (1) The Area Agency on Aging may develop procedures for the provision of a voucher system of payment that may be available to the client who has demonstrated to the satisfaction of the Agency that he is able to manage the provisions of services specified in the care plan. Such procedures shall be developed in accordance with guidelines developed by and approved by the Division.~~

R510-401-[7]6. [Mandatory] Caregiver Advisory Council.

(1) The Area Agency on Aging shall develop and maintain a Caregiver Advisory Council.

(2) ~~[The Caregiver Advisory Council shall be comprised of seven to ten caregivers and community members who work with and for caregivers.]~~ The Caregiver Advisory Council may be a subgroup of the Area Agency on Aging Advisory Council providing they meet the requirements set forth in the rule.

~~(a) The Caregiver Advisory Council shall be comprised of no less than five members of whom the majority shall be caregivers.~~

(3) The Caregiver Advisory Council shall meet no less than semiannually, and meetings shall be scheduled by each Area Agency on Aging.

~~(4) [The duties of the Caregiver Advisory Council shall be to survey community satisfaction with the caregiver program and to advise the Area Agency on Aging in determining service needs and developing action plans.]~~ The duties of the Caregiver Advisory Council shall be to conduct an annual client satisfaction survey for the caregiver program.

~~(5) The Caregiver Advisory Council shall advise the Area Agency on Aging in determining service needs and developing action plans. When there is a concern over the use of limited resources for Respite Care and Supplemental Services, the Area Agencies on Aging, in consultation with their Caregiver Advisory Council, may further limit the amount of services provided to an individual caregiver. This local policy decision shall be in writing and shall be uniform for all caregivers for the current fiscal year.~~

~~(5)](6) The Area Agency on Aging shall be responsible for developing [trainings]orientations for Caregiver Advisory Councils on caregiver issues and responding to community needs.~~

~~[(6) When there is a concern over the use of limited resources for Respite Care and Supplemental Services, Area Agencies on Aging, with the advice and consultation of their Caregiver Advisory Council, may further limit the amount of services provided to an individual caregiver. This local policy decision shall be in writing and shall be uniform for all caregivers.]~~

R510-401-[8]7. Voluntary Contributions.

(1) Individuals receiving services from this program may be encouraged to participate in voluntary contributions for services, provided that the method of solicitation is non-coercive.

(2) Voluntary contributions shall in no way be based on a means test of an individual client's income.

(3) Each Area Agency on Aging shall implement procedures for voluntary contributions in the UCSP, and shall comply, at a minimum, with the following:

(a) provide each recipient with an opportunity to voluntarily contribute to the cost of the services;

(b) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

(c) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution; and

(d) establish appropriate procedures to safeguard and account for voluntary contributions.

(4) Use all collected voluntary contributions to expand the service for which such contributions were given.

(5) In no instance shall services be denied if individuals do not participate in voluntary contributions.

(6) Area Agencies on Aging will consult with relevant service providers and older individuals in their planning and service area to determine the best method for accepting voluntary contributions.

R510-401-[9]8. Reporting.

(1) The Area Agency on Aging shall collect data and maintain records relating to the UCSP in the format specified by the Division.

(2) The Area Agency on Aging shall furnish the records to the DAAS as specified.

(3) The Area Agency on Aging shall report to DAAS, as specified, the activities and determinations of the Caregiver Advisory Council.

[R510-401-10. Waiver.

~~— An Area Agency on Aging may request a waiver from the provisions of these rules in order to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Division may grant a waiver to an Area Agency on Aging on a case-by-case basis provided such waiver is consistent with the law. This waiver request must be made in writing to the Division.~~

[R510-401-10. Waiver for Supplemental Services.

~~— An Area Agency on Aging may request in writing a waiver for Supplemental Services in order to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Agency Director may grant a waiver for Supplemental Services on a case-by-case basis provided that such waiver is consistent with the law. A copy of the approved waiver request must be sent in writing to the Division.~~

R510-401-11. Waiver for Respite Services.

~~— An Area Agency on Aging may request a waiver for Respite Services to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Division and the Agency Director may grant a waiver for Respite Services on a case-by-case basis provided such waiver is consistent with the law. This waiver request must be in writing to the Division. If the Agency Director approves the request, the approved written request is submitted to the Division for either approval or denial. The Division has ten working days to respond. The decision of the Division becomes the final decision.~~

**KEY: caregiver, care receiver, elderly, respite
2003**

62A-3-104(4)

62A-3-104(5)



NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-10** Physician Services

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 26036
FILED: 02/11/2003, 16:59

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly.

SUMMARY OF THE RULE OR CHANGE: Subsections R414-10-6(1) and R414-10-6(2) are amended to replace the \$2 copayment with the \$3 copayment up to a maximum of \$100 per year. The \$15 per year copayment limit is removed. In all instances in the rule, "co-payment" is changed to "copayment."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 58, Chapter 12; and Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This will save the General Fund \$36,300 but will lose \$88,571 in federal matching funds.
- ❖ **LOCAL GOVERNMENTS:** If local government physicians choose to serve Medicaid clients that are able, but unwilling to pay the copayment, their reimbursement will drop by \$1 per encounter. The recipient's Medicaid card clearly identifies which recipients are deemed able to pay the copayment.

State reimbursement to local government physician/clinics will drop by a percentage of \$124,871.

❖ **OTHER PERSONS:** If private physicians choose to serve Medicaid clients that are able, but unwilling to pay the copayment, their reimbursement will drop by \$1 per encounter. The recipient's Medicaid card clearly identifies which recipients are deemed able to pay the copayment. State reimbursement to local government physician/clinics will drop by a percentage of \$124,871.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal modifications to provider data systems in order to incorporate the changed copayment. Medicaid recipients will incur an additional cost of \$1 per doctor visit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will increase the contribution that a Medicaid recipient will be required to contribute toward the cost of care and may have a negative impact on providers if they choose to provide the service without collecting the copayment, but is an appropriate measure to control program expenditures and will support economy and efficiency in the Medicaid program. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements. place the agency in violation of federal or state law.

Without this and other emergency and regular rulemakings, the Medicaid program would expend more than was authorized for the FY 2003 budget. The delay to implement regular rulemaking would make it impossible to generate sufficient savings to stay within appropriations authorized by the 2002 Legislature.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

THIS RULE IS EFFECTIVE ON: 02/11/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

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

R414-10. Physician Services.

R414-10-1. Introduction and Authority.

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid recipients. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, Chapter 12, UCA.

(2) Physician services are a mandatory Medicaid, Title XIX, program authorized by Sections 1901 and 1905(a)(1) of the Social Security Act, 42 CFR 440.50, October 1996 edition, and Sections 26-1-5 and 26-18-3, UCA.

R414-10-2. Definitions.

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Childhood health evaluation and care" (CHEC) means the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment for children under the age of 21.

(2) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(3) "Clinical Laboratory Improvement Amendments" (CLIA) means the federal Health Care Financing Administration program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Cognitive services" means non-invasive diagnostic, therapeutic, or preventive office visits, hospital visits, therapy, and related nonsurgical services.

(5) "Covered Medicaid service" means service available to the eligible Medicaid client within the constraints of Medicaid policy and criteria for approval of service.

(6) "Current Procedural Terminology" (CPT) means the manual published by the American Medical Association that provides a systematic listing and coding of procedures and services performed by physicians and simplifies the reporting of services, which is adopted and incorporated by reference. Some limitations are addressed in R414-26.

(7) "Early and periodic screening, diagnosis, and treatment" (EPSDT) means the federally mandated program for children under the age of 21.

(8) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.

(9) "Health Common Procedures Coding System" (HCPCS) means a system mandated by the Health Care Financing Administration to code procedures and services. This system utilizes the CPT Manual for physicians, and individually developed service codes and definitions for nonphysician providers. The coding system is used to provide consistency in determining payment for services provided by physicians and noninstitutional providers.

(10) "Intensive, inpatient hospital rehabilitation service" means an intense rehabilitation program provided in an acute care general hospital through the services of a multidisciplinary, coordinated, team approach directed toward improving the ability of the patient to function.

(11) "Package surgical procedures" means preoperative office visits and preparation, the operation, local infiltration, topical or regional anesthesia when used, and the normal, uncomplicated follow-up care extending up to six weeks post-surgery.

(12) "Patient" means an individual who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(13) "Personal supervision" means the critical observation and guidance of medical services by a physician of a nonphysician's activities within that nonphysician's licensed scope of practice.

(14) "Physician services," whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services provided:

(a) within the scope of practice of medicine or osteopathy; and

(b) by or under the personal supervision of an individual licensed to practice medicine or osteopathy.

(15) "Prior authorization" means the required approval for provision of a service, that the provider must obtain from the Department before providing that service.

(16) "Professional component" means that part of laboratory or radiology service that may be provided only by a physician capable of analyzing a procedure or service and providing a written report of findings.

(17) "Provider" means an entity or a licensed practitioner of the healing arts providing approved Medicaid services to patients under a provider agreement with the Department.

(18) "Services" means the types of medical assistance specified in Sections 1905(a)(1) through (25) of the Social Security Act and interpreted in 42 CFR 440, October 1996 edition, which are adopted and incorporated by reference.

(19) "Technical component" means that part of laboratory or radiology service necessary to secure a specimen and prepare it for analysis, or to take an x-ray and prepare it for reading and interpretation.

R414-10-3. Client Eligibility Requirements.

Physician services are available to categorically and medically needy eligible individuals.

R414-10-4. Program Access Requirements.

(1) Physician services are available only from a physician who meets all requirements necessary to participate in the Utah Medicaid Program and who has signed a provider agreement.

(2) Physician services are available only from a physician who renders medically necessary physician services in accordance with his specific provider agreement and with Department rules.

(3) An eligible Medicaid client may seek physician services from:

(a) a physician in private practice who is an enrolled Medicaid provider;

(b) a Health Maintenance Organization (HMO) that has a contract with the Department;

(c) a federally qualified community health center; or

(d) any other organized practice setting recognized by the Department for providing physician services.

R414-10-5. Service Coverage.

(1) Physician services involve direct patient care and securing and supervising appropriate diagnostic ancillary tests or services in order to diagnose the existence, nature, or extent of illness, injury, or disability. In addition, physician services involve establishing a course of medically necessary treatment designed to prevent or minimize the adverse effects of human disease, pain, illness, injury, infirmity, deformity, or other impairments to a client's physical or mental health.

(2) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(3) Program limitations and noncovered services are established by specific program policy maintained in the Physician Provider Manual and updated by notification through Medicaid Information Bulletins. Following is a general list of medical and health care services excluded from coverage:

(a) Services rendered during a period the recipient was ineligible for Medicaid;

(b) Services medically unnecessary or unreasonable;

(c) Services which fail to meet existing standards of professional practice, or which are currently professionally unacceptable;

(d) Services requiring prior authorization, but for which such authorization was not received;

(e) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(f) Services fraudulently claimed;

(g) Services which represent abuse or overuse;

(h) Services rejected or disallowed by Medicare when the rejection was based upon any of the reasons listed above.

(i) Services for which third party payors are primarily responsible, e.g., Medicare, private health insurance, liability insurance. Medicaid may make a partial payment up to the Medicaid maximum if the limit has not been reached by a third party.

(j) If a procedure or service is not covered for any of the above reasons or because of specific policy exclusion, all related services and supplies, including institutional costs, are excluded for the standard post operative recovery period.

(4) Experimental or medically unproven physician services or procedures are excluded from coverage. Criteria established and approved by the Department staff and physician consultants are used to identify noncovered services and procedures. Policy statements developed by the Department of Health and Human Services, Health Care Financing Administration, Coverage Issues Bureau, are also used to determine Department policy for noncovered services.

(5) Certain services are excluded from coverage because medical necessity, appropriate utilization, and cost effectiveness of the services cannot be assured. A variety of lifestyle factors contribute to the "syndromes" associated with such services, and there is no specific

therapy or treatment identified except for those that border on behavior modification, experimental, or unproven practices. Services include:

(a) Sleep apnea or sleep studies, or both;

(b) pain clinics; and

(c) Eating disorders clinics.

(6) When a service or procedure does not qualify for coverage under the Medicaid program because it is an elective cosmetic, reconstructive, or plastic surgery, all related services, supplies, and institutional costs are excluded from coverage.

(7) Medications for appetite suppression, surgical procedures, unproven or experimental treatments, or educational, nutritional support programs for the treatment of obesity or weight control, are excluded from coverage.

(8) Cognitive or Office Services:

(a) Cognitive services by a provider are limited to one service per client per day. These services are defined as office visits, hospital visits except for those following a package surgical procedure, therapy visits, and other types of nonsurgical services. When a second office visit for the same problem or a hospital admission occurs on the same date as another service, the physician shall combine the services as one service and select a procedure code that indicates the overall care given.

(b) Routine physical examinations, not part of an otherwise medically necessary service, are excluded from coverage, except in the following circumstances:

(i) Preschool and school age children, including those who are EPSDT (CHEC) eligible, participating in the ongoing CHEC program of scheduled services and follow-up care.

(ii) New patients seeing a physician for the first time with an initial complaint where a comprehensive physical examination, including a medical and social history, is necessary.

(iii) Medically necessary examinations associated with birth control medication, devices, and instructions.

(c) Family planning services may be provided only by or under the supervision of a physician and only to individuals of childbearing age, including sexually active minors. The following services are excluded from coverage as family planning services:

(i) Experimental or unproven medical procedures, practices, or medication.

(ii) Surgical procedures for the reversal of previous elective sterilization, both male and female.

(iii) Infertility studies.

(iv) In-vitro fertilization.

(v) Artificial insemination.

(vi) Surrogate motherhood, including all services, tests, and related charges.

(vii) Abortion, except where the life of the mother would be endangered if the fetus were carried to term, or where pregnancy is the result of rape or incest.

(d) After-hours service codes may be used only by a private physician, primary care provider, who responds to treat a patient in the physician's private office for a medical emergency, accident, or injury after regular office hours. Only one of the after hours CPT codes may be used per visit.

(e) Laboratory services provided by a physician in his office are limited to the waived tests or those types of laboratory tests identified by the federal Health Care Financing Administration for which each individual physician is CLIA certified to provide, bill, and receive Medicaid payment.

(f) A specimen collection fee is covered for service in a physician's office only when a specimen is to be sent to an outside laboratory, and the physician or one of his office staff under his

personal supervision actually extracts the specimen from a patient, and only by one of the following tasks:

- (i) Drawing a blood sample through venipuncture, i.e., inserting into a vein a needle with syringe or vacutainer to draw the specimen; or
- (ii) Collecting a urine sample by catheterization.
- (iii) A drawing fee for finger, heel, or ear sticks is limited to only infants under the age of two years.
- (g) Eye examinations are covered, but only once each calendar year.
- (h) Contact lenses are covered only for aphakia, nystagmus, keratoconus, severe corneal distortion, cataract surgery, and in those cases where visual acuity cannot be corrected to at least 20/70 in the better eye.

(9) Psychiatric Services:

(a) Psychiatric services or psychosocial diagnosis and counseling are specialty medical services. Psychiatric services, whether in a private office, a group practice, or private clinic setting, may only be provided directly and documented and billed to the Department by the private physician. Charting and documentation must clearly reflect the private physician's direct provision of care.

(b) Nonphysician psychosocial counseling services are excluded from coverage as a Medicaid benefit. The personal supervision policy, R414-45, may not be applied to psychiatric services.

(c) Admission to a general hospital for psychiatric care by a physician requires prior authorization and is limited to those cases determined by established criteria and utilization review standards to be of a severity that appropriate intensity of service cannot be provided in any alternate setting.

(d) Coverage for treatment of organic brain disease is limited to that provided by the primary care provider.

(10) Laboratory and Radiology Services:

(a) Physicians prepared in a highly specialized field of practice, e.g., neurology or neurosurgery, who provide consultation and diagnostic radiology services in an independent setting at the request of a private physician may bill for both the technical and professional component of the radiology service.

(b) Dermatologists with specialized preparation in pathology services specifically for the skin may provide and bill for those services.

(11) Hospital Services:

(a) A patient hospitalized for nonsurgical services may require more than one visit per day because of the patient's condition and treatment needs. Since physician visits are limited to one per day, the physician shall select one procedure code to define the overall care given. If intensive care services are provided, or critical care service codes are used to define service provided, the Department requires additional documentation from the physician. The medical record must show documentation of medical necessity and result of the additional service.

(b) If, for the convenience of the physician and not for medical necessity, a patient is transferred between physicians within the same hospital or from one hospital to another hospital, both physicians may only use subsequent hospital care service codes to define and bill for services provided. Under this policy limitation, services associated with the following codes are excluded from coverage as a Medicaid benefit:

- (i) Consultation; and
- (ii) Initial hospital care services.
- (c) Treatment of alcoholism or drug dependency in an inpatient setting is limited to acute care for detoxification only.

(d) Services for pregnant women who do not meet United States residency requirements (undocumented aliens) are limited to only hospital admission for labor and delivery. Medicaid does not cover prenatal services.

(12) Abortion, Sterilization and Hysterectomy:

(a) Abortion procedures are limited to:

- (i) those where the pregnancy is the result of rape or incest; or
- (ii) a case with medical certification of necessity where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Sterilization and hysterectomy procedures are limited to those which meet the requirements of 42 CFR 441, Subpart F, October 1996 edition, which is adopted and incorporated by reference.

(13) Cosmetic, Plastic, or Reconstructive Services:

(a) Cosmetic, plastic, or reconstructive surgery procedures may only be covered when medically necessary to:

- (i) correct a congenital anomaly;
- (ii) restore body form or function following an accidental injury; or
- (iii) revise severe disfiguring and extensive scarring resulting from neoplastic surgery.

(14) Surgical Services:

(a) Surgical procedures defined and coded in the CPT Manual are limited by Utah Medicaid policy to prior authorization, or are excluded from coverage. Limitations are documented on the Medical and Surgical Procedures Prior Authorization List, reviewed and revised yearly and maintained in the Physician Provider Manual through notification by Provider Bulletins.

(b) Surgical procedures are "package" services. The package service includes:

- (i) the preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as admission to the hospital;
- (ii) the operation;
- (iii) any topical, local, or regional anesthesia; and
- (iv) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure for up to six weeks post surgery.

(c) Interpretation of "package" services:

(i) A physician may not bill for an office visit the day prior to surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "package" surgical service.

(ii) Consultation services may be billed by the consulting physician only when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, only admission codes and subsequent care codes may be used.

(iii) Office visits for up to six weeks following the hospitalization which relate to the same diagnosis are part of the "package" service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(d) Procedures exempt from the "package" definition are identified in the CPT Manual by an asterisk. The CPT Manual outlines the surgical guidelines which apply to documentation and billing of procedures marked by an asterisk.

(e) Complications, exacerbations, recurrence, or the presence of other diseases or injuries requiring services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(f) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(g) Preoperative examination and planning are covered as separate services only in the following circumstances:

(i) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis, determine the need for a specific surgical procedure, or prepare the patient;

(ii) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or

(iii) When diagnostic procedures, not part of the basic surgical procedure, e.g., bronchoscopy prior to chest surgery, are provided during the immediate preoperative period.

(h) Exploratory laparotomy procedures confirm a diagnosis and determine the extent of necessary treatment. A physician may request payment only if the exploratory procedure is the only procedure done during an operative session.

(i) The services of an assistant surgeon are specialty services to be provided only by a licensed physician, and are covered only on very complex surgical procedures. Procedures not authorized for assistant surgeon coverage are listed in the Physician Provider Manual and updated by Medicaid Provider Bulletins as necessary. Medicare guidelines for limitation of assistant surgeon coverage are used, since those decisions are made at the national level with physician consultation.

(j) Medicaid does not cover surgical procedures, experimental therapies, or educational, nutritional, support programs for treatment of obesity or weight control.

(15) Diagnostic and Therapeutic Procedures:

(a) Diagnostic needle procedures, e.g., lumbar puncture, thoracentesis, and jugular, femoral vein, or subdural taps, when performed as part of a necessary workup for a serious medical illness or injury, are covered in addition to other medical care on the same day.

(b) Diagnostic "oscopy" procedures, e.g., endoscopy, bronchoscopy, and laparoscopy, are covered separately from any major surgical procedure. However, when an "oscopy" procedure is done the same day or at the same operative session as another procedure, the "oscopy" procedure may only be covered as a multiple procedure.

(c) Magnetic resonance imaging (MRI) is covered only for service to the brain, spinal cord, hip, thigh and abdomen.

(d) Therapeutic needle procedures, e.g., scalp vein insertion, injections into cavities, nerve blocks, are covered in addition to other medical care on the same day.

(e) Puncture of a cavity or joint for aspiration followed by injection of a medication is covered as one procedure and identified by specific CPT code.

(16) Anesthesia Services:

Anesthesia services are covered only when administered by a licensed anesthesiologist or nurse anesthetist who remains in attendance for the sole purpose of rendering general anesthesia services. Standby or monitoring by the anesthesiologist or anesthetist during local anesthesia is not a covered Medicaid anesthesia service.

(17) Transplant Services:

Except for kidney and cornea transplants, Medicaid limits organ transplant services to those procedures for which selection criteria have been approved and documented in R414-10A.

(18) Modifiers:

Modifiers may be used only, as defined in the CPT Manual, to show that a service or procedure has been altered to some degree but not changed in definition or code. The following limitations apply:

(a) The professional component, modifier 26, may be used only with laboratory and radiology service codes and only when direct analysis, interpretation, and written report of findings are provided by a physician on a laboratory or radiology procedure.

(b) Unusual services are identified by use of modifier 22, along with the appropriate CPT code. A prepayment review of unusual services shall be completed by Medicaid professional staff or physician consultants. A report of the service and any important supporting documentation must be submitted with the claim for review.

(c) Anesthesia by surgeon is identified by use of modifier 47. The operating surgeon may not use modifier 47 in addition to the basic procedure code. Anesthesia provided by the surgeon is part of the basic procedure being provided.

(d) Mandated services as defined by CPT and identified by modifier 32 are noncovered services.

(e) Reference laboratory services identified by modifier 90 are noncovered services.

(19) Medications:

(a) Drugs and biologicals are limited to those approved by the Food and Drug Administration (FDA), or those approved by the Drug Utilization Review Board (DUR) for off-label use, which is use for a condition different from that initially intended for the drug or biological. Medicaid coverage of drugs and biologicals is based on individual need and orders written by a physician when the drug is given in accordance with accepted standards of medical practice and within the protocol of accepted use for the drug.

(i) Generic drugs shall be used whenever a generic product approved by the FDA is available. If the physician determines that a brand name drug is medically necessary, the physician may override the generic requirement by writing on the prescription in his own hand writing "name brand medically necessary". Preprinted messages, abbreviations, or notations by a second party, do not meet the override requirement. The pharmacist shall fill the prescription with the generic equivalent product if the override procedure is not followed.

(ii) Injectable medications approved in HCPCS are identified in the "J" code list published by the Health Care Financing Administration or the Department, or both. The list is reviewed and revised yearly and maintained in the Physician Provider Manual by notification and update through Medicaid Provider Bulletins.

(iii) The "J" code covers only the cost of an approved product.

(iv) Office visits only for administration of medication are excluded from coverage. However, an injection code which covers the cost of the syringe, needle and administration of the medication may be used with the "J" code when medication administration is the only reason for an office call.

(v) When an office service is provided for other purposes, in addition to medication administration, only the office visit and a "J" code may be used to bill for the service provided.

(vi) The office visit code and injection code may never be used together. Only one of the codes may be used to define the service provided.

(vii) Vitamin B-12 is limited to use only in treating conditions where physiological mechanisms produce pernicious anemia. Use of Vitamin B-12 in treating any unrelated condition is excluded from coverage.

(b) Vitamins may be provided only for:

- (i) Pregnant women: Prenatal vitamins with 1 mg folic acid.
- (ii) Children through age five: Children's vitamins with fluoride.
- (iii) Children through age one: multiple vitamin (A, C, and D)

without fluoride.

(iv) Children through age 15: Fluoride supplement.

(c) Human growth stimulating hormones are limited to CHEC eligible children under the age of 15 who meet the established internal criteria for coverage that has been published and is available in the Provider Manual.

(d) Methylphenidates, amphetamines, and other central nervous system stimulants require prior authorization and may be provided only for treatment of Attention Deficit Disorder (ADD).

(e) Medications for appetite suppression are not a covered service.

(f) Non-prescription, over-the-counter items are limited, and notification of changes consistent with this rule is made by Provider Bulletin and Provider Manual updates.

(g) Nutrients may be provided only as established in R414-24A.

R414-10-6. Co[-]payment Policy.

This rule establishes co[-]payment policy for physician services for Medicaid clients who are not in any of the federal categories exempted from co[-]payment requirements. The rule is authorized by 42 CFR 447.15 and 447.50, Oct. 1, 2000 ed., which are adopted and incorporated by reference.

(1) The Department shall impose a co[-]payment in the amount of \$[2]3 for each physician visit when a non-exempt Medicaid client, as designated on his Medicaid card, receives that physician service. The Department shall limit the out-of-pocket expense of the Medicaid client to \$100 annually. [~~Co-payments for pharmacy services will continue to be limited to \$5.00 per month.~~]

(2) The Department shall deduct \$[2]3 from the reimbursement paid to the provider for each physician visit, limited to one per day.

(3) The provider should collect the co[-]payment amount from the Medicaid client for each physician visit, limited to one per day.

(4) Medicaid clients in the following categories are exempt from co[-]payment requirements:

- (a) children;
- (b) pregnant women;
- (c) institutionalized individuals;

(d) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the co[-]payment requirements.

(5) Physician services for family planning purposes are exempt from the co[-]payment requirements.

KEY: [m]Medicaid

February 11, 2003

Notice of Continuation March 8, 2002

26-1-5

26-18-3



End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Health, Health Systems Improvement, Licensing **R432-16** Hospice Inpatient Facility Construction

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26038
FILED: 02/12/2003, 08:24

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21 creates the Health Facility Licensing and Inspection Act and Subsection 26-21-5 requires the health facility committee to make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act for the licensing of health-care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the first effective date of February 26, 1998, the rule has had one nonsubstantive amendment to correct citations. No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R432-16 is the rule establishing a minimum standard for the construction of an inpatient hospice facility. This rule sets a minimum standard to ensure that architects, contractors and owners are aware of the building standards for a free standing facility. The Health Facility Committee supports the continuation of the rule and will continue to review this rule as medical practice and standards of care change.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 02/12/2003



Insurance, Administration **R590-157** Taxation of Surplus Lines Premiums

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26033
FILED: 02/10/2003, 14:34

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the commissioner the authority to make rules to implement the insurance code. Subsection 31A-3-303(2) authorizes a rule to prescribe accounting and reporting forms and procedures in determining the amount of taxes owed under this section and manner and time and payment. The amount is noted in Section 5 of the rule. Subsection 31A-15-103(11)(d) authorizes the commissioner to determine the amount of the stamping fee and its payment. This is done in Subsection 3.E. of this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the department regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides procedures and reporting forms to be used by insurers, brokers and policyholders in calculating the tax due. As a result of the regulation, all who charge for the tax, charge the same amount. It makes the payment uniform and fair.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/10/2003



Natural Resources, Parks and
Recreation
R651-102
Government Records Access
Management Act

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26039
FILED: 02/13/2003, 12:45

**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: Utah Code Annotated, Section 63-2-201 provides that every person has the right to inspect a public record free of charge, other than a reasonable fee to cover the governmental entity's actual cost of duplicating a record. This rule defines records that are public, private, controlled, or controlled. This information needs to be in this rule for the public so they know how to file for a record(s), and the state agency defining records that can be viewed or reproduced and what cannot (i.e. private, controlled, or protected).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Parks has received no written comments supporting or opposing this rule since the last five-year review in 1998.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines GRAMA (Government Records Access Management Act) and the purpose is to make all public government records available for public view. Unless they are private, controlled or protected under Sections 63-2-302, 63-2-302.5, 63-2-303, and 63-2-304, they are considered public. This gives the public information on how to get records and the agencies information on how and what files they can share with the public. We ask that it be continued.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Dave Morrow, Deputy Director

EFFECTIVE: 02/13/2003



Natural Resources, Parks and
Recreation
R651-301
State Recreation Fiscal Assistance
Programs

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26040
FILED: 02/13/2003, 13:00

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Utah Code Annotated, Sections 63-11a-501 and 63-11-17.8 lists rules that govern procedures for fiscal assistance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS

SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule lists procedures for fiscal assistance applications, priorities, and project selection criteria that apply to Riverway Enhancement, Non-Motorized Trails and Off-Highway vehicles.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Dave Morrow, Deputy Director

EFFECTIVE: 02/13/2003



Professional Practices Advisory
Commission, Administration
R686-100
Professional Practices Advisory
Commission, Rules of Procedure:
Complaints and Hearings

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 26032
FILED: 02/07/2003, 14:24

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-6-306(1) directs the Utah Professional Practices Advisory Commission (UPPAC) to adopt rules to carry out its responsibilities under the law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides specific procedures for UPPAC investigations, complaints, and hearings. The procedures defined in this rule were recently affirmed by Judge Sam in a federal court decision. (DAR Note: US District Court Docket No. 2:00cv 996.)

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

PROFESSIONAL PRACTICES
ADVISORY COMMISSION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 02/07/2003



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services

Facilities Construction and Management

No. 25783 (AMD): R23-4. Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts.
Published: January 1, 2003
Effective: February 4, 2003

No. 25770 (REP): R23-7. Utah State Building Board Policy Statement Master Planning.
Published: January 1, 2003
Effective: February 4, 2003

No. 25784 (AMD): R23-10. Naming of State Buildings.
Published: January 1, 2003
Effective: February 4, 2003

No. 25771 (REP): R23-11. Facilities Allocation and Sale Procedures.
Published: January 1, 2003
Effective: February 4, 2003

Environmental Quality

Environmental Response and Remediation

No. 25161 (CPR): R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.
Published: January 1, 2003
Effective: February 4, 2003

Water Quality

No. 25633 (NEW): R317-9. Administrative Procedures.
Published: December 1, 2002
Effective: February 5, 2003

Natural Resources

Water Rights

No. 25550 (NEW): R655-7. Administrative Procedures for Notifying the State Engineer of Sewage Effluent Use or Change in the Point of Discharge for Sewage Effluent.
Published: November 15, 2002
Effective: February 1, 2003

Pardons (Board Of)

Administration

No. 25345 (AMD): R671-102. Americans with Disabilities Act Complaint Procedure Rule.
Published: October 15, 2002
Effective: February 12, 2003

No. 25350 (AMD): R671-202. Notification of Hearings.
Published: October 15, 2002
Effective: February 12, 2003

No. 25394 (AMD): R671-308. Offender Hearing Assistance.
Published: October 15, 2002
Effective: February 12, 2003

No. 25398 (AMD): R671-311. Special Attention Hearings and Reviews.
Published: October 15, 2002
Effective: February 12, 2003

Workforce Services

Employment Development

No. 25827 (AMD): R986-400-404. Participation Requirements.
Published: January 1, 2003
Effective: February 6, 2003

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2002, including notices of effective date received through February 14, 2003, the effective dates of which are no later than March 1, 2003. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: Because of publication constraints, neither index is printed in the Bulletin.

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/>).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).
