

UTAH STATE BULLETIN

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

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

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.state.ut.us/>

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SPECIAL NOTICES

EXECUTIVE ORDER

Whereas, the primary role of government is to protect the health, safety, and welfare of citizens;

Whereas, driving under the influence of alcohol and other drugs is a major cause of violence on Utah's highways;

Whereas, driving under the influence of alcohol and other drugs is a cause of preventable deaths and injuries to Utah citizens; and

Whereas, the Governor's Council on Driving Under the Influence was created by Executive Order on September 17, 1999; and

Whereas, the council requires one additional year of operation to accomplish its goals.

Now, therefore, I, Michael O. Leavitt, governor of the state of Utah, order the following:

I. The Governor's Council on Driving Under the Influence shall be renewed and continue through March 15, 2002.

II. The council shall:

A. provide a forum for discussion, planning and the coordination of efforts with the Utah Substance Abuse and Anti-Violence Coordinating Council and the Utah Highway Safety Office to reduce the incidence of driving under the influence of alcohol and other drugs on the highways in the state;

B. study ways to increase public awareness of and education relating to driving under the influence issues in cooperation with the Utah Highway Safety Office;

C. review current sentencing laws and practices in cooperation with the Utah Sentencing Commission;

D. review the effectiveness of existing programs in cooperation with the Utah Division of Substance Abuse;

E. examine the quality and completeness of driving under the influence records in cooperation with the Utah Commission on Criminal and Juvenile Justice;

F. develop and recommend proposals to address priority issues and adequate funding of needs in cooperation with the Utah Commission on Criminal and Juvenile Justice; and

G. complete its study and report final recommendations to the governor and the Utah Substance Abuse and Anti-Violence Coordinating Council by September 1, 2001.

III. The council shall consist of 21 members, including:

A. the following members representing Utah agencies and organizations:

1. a member of the Senate designated by the president of the Senate;

2. a member of the House of Representatives designated by the speaker of the House;

3. a representative designated by the Utah Chiefs of Police Association;

4. a representative designated by the Utah Sheriffs Association;

5. three representatives designated by the commissioner of the Department of Public Safety, one each from the Highway Patrol, the Driver License Division, and the Highway Safety Office;

6. a representative designated by the Statewide Association of Public Attorneys;

SPECIAL NOTICES

7. the attorney general or designee;
8. a defense attorney designated by the Utah State Bar;
9. the director of the Division of Substance Abuse or designee;
10. the director of the Utah Sentencing Commission;
11. the administrator of the Utah Substance Abuse and Anti-Violence Coordinating Council;
12. a court administrative officer designated by the Judicial Council; and
13. a representative of the Utah Behavioral Healthcare Network designated by the president of the UBHN.

B. the following members appointed by the governor:

1. two representatives of crime victims;
2. a representative of businesses that sell or distribute alcoholic beverages;
3. a representative of health care providers;
4. a citizen representative; and
5. the lieutenant governor.

IV. Council procedures, staffing, and duration shall be as follows:

A. The governor shall appoint two members as co-chairs of the council.

B. A majority of the members of the council constitutes a quorum for conducting the business of the council. A majority vote of those present and voting shall be required for the transaction of any business by the council. Each member present at any meeting of the Council shall be entitled to one vote.

C. The council shall meet at times and places determined by the council co-chairs.

D. Subcommittees may be created within the council to serve for a specified purpose and period of time.

E. Research on council priorities may be conducted at the request of the co-chairs.

F. The Utah Division of Substance Abuse shall provide staff to the council.

G. The council shall remain at the call of the co-chairs upon completion of its study and submission of its final report on September 1, 2001 until March 15, 2002, at which date the council is discontinued.

IN TESTIMONY WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah on this 7th day of March, 2001.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

Attest:
OLENE WALKER
Lieutenant Governor

**DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, LIBRARY**

PUBLIC NOTICE OF AVAILABLE UTAH STATE PUBLICATIONS

The Utah State Library Division has made available Utah State Publications List No. 01-06, dated March 16, 2001 (<http://www.state.lib.ut.us/01-06.html>). For a copy of the complete list, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773; or view them on the World Wide Web at the address above.

End of the Special Notices Section

Notices of Proposed Rules Begins on the Following Page

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between March 2, 2001, 12:00 a.m., and March 15, 2001, 11:59 p.m., are included in this, the April 1, 2001, 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 rules that are too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least May 1, 2001. 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 July 30, 2001, 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 (1996); 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.

Agriculture and Food, Regulatory
Services
R70-101
Bedding, Upholstered Furniture and
Quilted Clothing

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 23542
FILED: 03/06/2001, 14:02
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to designate the license fees, labeling, terms, definitions, nomenclature and conditions as commonly used and recognized in the manufacture, sale and distribution of bedding, upholstered furniture, quilted clothing products, and fill materials.

SUMMARY OF THE RULE OR CHANGE: This amendment is changing some of the requirements required for the manufacturing, distribution, advertising, labeling and sale of quilted clothing; including manufacturer identification and tag requirements. Also, changes in grammar and punctuation within the text.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-10-3

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** There is no anticipated cost or savings to state budget because the cost is a fee charged for a license to any person who advertises, solicits, or contracts to manufacture bedding, upholstered furniture, quilted clothing, or filling materials.

❖**LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the cost is a fee charged for a license to any person who advertises, solicits, or contracts to manufacture bedding, upholstered furniture, quilted clothing, or filling materials.

❖**OTHER PERSONS:** The fee imposed for each license granted under these rules shall be approved by the Legislature. When the appropriate fee is not paid on or before January 1, the license shall become delinquent, and there shall be added to the fee a penalty of \$25.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In addition to other remedies provided in these rules, the department shall have the authority to suspend or revoke any registration or license required by these rules for any violation of their provisions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact on businesses would be the fee charged for the license.

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

Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Claudia Gale at the above address, by phone at (801) 538-7151, by FAX at (801) 538-4949, or by Internet E-mail at agmain.cgale@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.**R70-101. Bedding, Upholstered Furniture and Quilted Clothing.****R70-101-1. Authority.**

A. Promulgated Under Authority of Section 4-10-3.

B. Scope: The purpose of these rules is to designate the license fees, labeling, terms, definitions, nomenclature and conditions as commonly used and recognized in the manufacture, sale and distribution of bedding, upholstered furniture, quilted clothing products, and filling materials.

R70-101-2. General Requirements.

A. These rules shall apply to all persons, partnerships, corporations and associations engaged in the business of manufacturing, retailing, wholesaling, processing, repairing, and selling items of bedding, upholstered furniture, ~~and~~ quilted clothing, and filling materials. These rules do not apply to persons who make or renovate upholstered furniture, clothing or bedding for their own use.

B. Foreign, out-of-state articles or materials sold in Utah. This rule shall apply to bedding, upholstered furniture, quilted clothing, and filling materials sold in Utah regardless of their point of origin.

R70-101-3. Definitions.

A. "Manufacture" means to make, process, or prepare from new or secondhand material, in whole or in part, any bedding, upholstered furniture, quilted clothing, or filling material for sale; but does not include isolated sales of such articles by persons who are not primarily engaged in the making, processing, or preparation of these articles. For the purpose of the enforcement of this rule, the term "manufacturer" shall mean a person who either by himself or through employees or agents makes for the purpose of sale any bedding, upholstered furniture, quilted clothing, filling material, or

any unit thereof, or a retailer who sells bedding, upholstered furniture, quilted clothing, and filling material privately labeled under his name.

B. "Non-resident" means a person licensed under these rules who does not have premises in the State of Utah.

C. "Old" means filling material or portion thereof which shows characteristics of aging through deterioration or changing from its original qualities.

D. "Person" means an individual, partnership, association, firm, auctioneer, trust, or corporation, and agents, servants and employees of them.

E. "Premises" means all places where bedding, upholstered furniture, quilted clothing, or filling material is sold, offered for sale, exposed for sale, stored, renovated or manufactured, and the delivery vehicles used in their transportation.

F. "Supply dealer" means a person who manufactures, processes or sells at wholesale any felt, batting, pads or other filling, loose in bags, in bales or in containers, concealed or not concealed, intended for use in bedding, upholstered furniture, or quilted clothing.

G. "Sell" or any of its variants include any combination of the following[;]: sale, offer, or expose for sale, barter, trade, deliver, rent, consign, lease, possess with the intent to sell or dispose of in any other commercial manner[;]; but does not include any judicial, executor, administrator or guardian sale. The possession of any article of bedding, upholstered furniture, quilted clothing, or filling material[;] defined in these rules, by any maker, dealer, or his agents or servants in the course of business, shall be presumptive evidence of intent to sell.

R70-101-4. License.

Except as otherwise provided in these rules, any person who advertises, solicits or contracts to manufacture, repair or wholesale any bedding, upholstered furniture, quilted clothing, or filling materials who either does the work himself or has others do it for him, shall secure the particular license for the particular type of work that he solicits or advertises that he does, regardless of whether he has a shop or factory.

A. Annual license fee. The fee imposed for each license granted under these rules shall be approved by the Legislature.

When the appropriate fee is not paid on or before January 1, the license shall become delinquent, and there shall be added to the fee a penalty of \$25.

B. Suspension or revocation of license, procedure, review, record. In addition to other remedies provided in these rules, the Department shall have the authority to suspend or revoke any registration or license required by these rules for any violation of their provisions. A suspension or revocation shall be handled as outlined in Section 4-1-5.

R70-101-5. Sanitation Requirements.

A. Use of unsanitary filling material. The premises, delivery equipment, machinery, appliances, and devices of all persons licensed under these rules shall at all times be kept free from refuse, dirt, contamination or insects and no person shall use in the making, repair or renovating of bedding, upholstered furniture, or quilted clothing any filling material:

1. that contains any bugs, vermin or filth;
2. that is unsanitary;

3. that contains burlap, or other material, that has been used for baling.

R70-101-6. Manufacturing, Distribution, Advertising, Labeling and Sale of Quilted Clothing.

~~[The Department adopts the standards and procedures relating to quilted clothing as specified in Rules and Regulations Under the Textile Fiber Products Identification Act, July 9, 1986 edition; Federal Trade Commission Guides for the Feather and Down Products Industry, October 29, 1971 edition; Rules and Regulations Under the Fur Products Labeling Act, July 4, 1980 edition and the Rules and Regulations Under the Wool Products Labeling Act of 1939, July 9, 1986 edition; are hereby incorporated by reference within this rule; provided, that wherever the word "should" appears in the Federal Trade Commission guide, the word "shall" shall be inserted in lieu thereof, and excepting further that wherever conflicts arise, the state rule shall govern.]~~A. This section establishes standards and procedures relating to quilted clothing. The department adopts by reference the Rules and Regulations under the Textile Fiber Products Identification Act, July 9, 1986 edition; under the Fur Products Labeling Act, July 4, 1980 edition; and under the Wool Products Labeling Act of 1939, July 9, 1986 edition; excepting that wherever conflicts arise, the state rule shall govern.

B. Articles of plumage-filled clothing shall meet the following requirements:

1. Articles labeled "Down" shall contain a minimum of 75% down and plumules.

2. Articles containing less than 75% down, shall label the percentages of down and feathers contained therein and shall contain at a minimum the percentage of "Down" printed on the tag.

R70-101-7. Manufacturer Identification and Tag Requirements.

A. The identification of a manufacturer, wholesaler, or supply dealer of quilted clothing or filling material which is to appear on the label or tag ~~[will]~~shall be the same as required in rule 19-20 of the Federal Textile Fiber Products Identification Act and Wool Products Labeling Act, and the ~~[United States]~~ Federal Trade Commission Rules and Regulations.

~~[The]~~The form of identification used on labels or tags shall be the same supplied to the Department on the application for registration.

B. For articles of bedding and upholstered furniture, the law tag shall use the format adopted by the Association of Bedding and Furniture Law Officials (ABFLO), as listed in the "Tagging Law Manual" of the International Sleep Products Association (ISPA). A copy of the current edition of the "Tagging Law Manual" is available for public inspection at ~~[the Regulatory Services office of]~~ the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah.

1. Tags on articles manufactured wholly of new material shall be white in color.

2. Tags on articles manufactured in whole or in part of secondhand materials and tags for "Owners Own Material" shall be yellow.

3. Color of ink on tags shall be black.

4. Tags shall be made of material that cannot be torn or easily abraded, and shall be the required color on both surfaces.

5. All required information shall be clearly and legibly printed in English and printed on one side of the tag only.

6. Tags shall be firmly attached to the article(s) in a position easily visible for examination.

7. No mark, label, printed matter, illustration, sticker or any other device shall be placed upon the tags in such a way as to cover the required information.

~~(C)~~ 8. A single registry number, issued by the state in which the firm is first registered, shall be used on the law tag.

~~(D)~~ 9. Every firm ~~name~~ doing business under a separate registry number other than the one listed on their application for license ~~;~~ will be required to procure a license for each number used. (A change in suffix shall constitute a new number and require an additional license.)

R70-101-8. Generic Names, Grades, Descriptive Terms, and Definitions of Filling Material.

A. The filling material shall be described on the label or tag by the true generic name, grade, description term, or definitions of the filling material as accepted and approved by the Department. When more than one kind of filling material is used in a mixture, the percent by weight of each shall be listed in order of their predominance. Federal fiber tolerance standards are applicable ~~;~~, except as pertains to plumage products.

B. Blends may be described, if applicable, as under Section 14 in these rules. In the case of non-down and/or non-feather filled articles of quilted clothing, any fiber or groups of individual fibers present in an amount of less than 5% by weight, of the total fiber content may be designated only as "other fiber" or "other fibers ~~;~~".

C. When ~~a~~ different filling materials is ~~are~~ used in various parts of the garment, the areas of the garment shall be named, followed by the name of the filling material used in that area. Examples:

Body - ~~(f)50%~~ ~~(d)Down~~, 50% ~~(f)Feathers~~ ~~(j)~~ or -

Body - ~~(g)goose down~~ or body ~~(d)duck down or down~~ Goose Down (or) Duck Down (or) Down

Sleeves - Polyester ~~(f)Fiber~~

Pockets - Nylon ~~(f)Fiber~~

~~(B)~~ D. Use of ~~(F)~~ trade names and non-generic terms ~~used~~ to describe filling ~~materials~~ material(s) is prohibited.

R70-101-9. Use of Rubber Stamp or Stencil.

A rubber stamp or stencil may be used in lieu of a tag on articles having a smooth backing on which the imprint can be legibly and indelibly stamped, and on suitable surfaces of bales or containers of felt, batting, pads, or other filling material used or to be used in bedding, upholstered furniture, and quilted clothing products.

R70-101-10. Making or Selling Material or Parts.

A person shall not purchase, make, process, prepare, or sell, directly or indirectly, at wholesale or retail or otherwise, any filling material or other component parts to be used in bedding, upholstered furniture, or quilted clothing, unless such material is plainly tagged as described in the preceding section.

R70-101-11. Labeling of Foreign Articles.

Responsibility for labeling of unlabeled foreign-made bedding, upholstered furniture, quilted clothing, and filling material in

compliance with these rules shall rest with the person selling the merchandise in Utah.

R70-101-12. Violation of This Rule.

A. It shall be a separate violation of these rules for each improperly labeled or tagged or unlabeled or untagged article of bedding, upholstered furniture, quilted clothing, or filling material made, sold, exposed or offered for sale, delivered, consigned, rented or possessed with intent to sell contrary to the provisions of these rules.

B. Defense. No person shall be guilty of a violation of these rules if he has received, from the person by whom the articles were manufactured or from whom they were received, a guarantee in good faith ~~and~~ that the articles are not contrary to the provisions of these rules. The guarantee shall be in the form prescribed by the Federal Textile Fiber Products Identification Act, the Federal Wool Products Labeling Act and the ~~United States~~ Federal Trade Commission Rules and Regulations ~~issued~~.

R70-101-13. Enforcement Procedures.

A. Removal of Inspector's Tag. Any person who removes, or causes to be removed, any tag or device placed upon any article of bedding, upholstered furniture, ~~or~~ quilted clothing, or ~~any~~ filling material, by an inspector in the performance of his official duties, is guilty of violation of these rules.

B. Failure to Produce Articles Condemned. The failure of any person to produce upon demand of an inspector any article that has been condemned and ordered held on inspection notice signed by the person, or an inspection notice that the person has refused to sign, is a violation of these rules.

C. Interfere, Hinder Inspector. No person shall interfere with, obstruct, or ~~other wise~~ otherwise hinder any inspector of the Department in the performance of his duties.

D. Retailer's Responsibility to:

~~(a)~~ 1. insure that any article of bedding, upholstered furniture, quilted clothing, or filling material they sell is labeled with a uniform law tag ~~;~~;

~~(b)~~ 2. fully comply with the Department's laws and rules governing false and misleading advertisement;

3. and make sure that all manufacturers from whom they purchase products that come under the purview of the act, hold a valid license with the department.

4. In addition, upon request of any representative of the Department, a retailer shall provide the Department with the identity of the manufacturer or wholesaler of any article of bedding, upholstered furniture, quilted clothing, or filling material sold by a retailer.

5. If the manufacturer or wholesaler so identified is not registered pursuant to these rules and fails or refuses to register upon notification by the Department, any article of bedding, upholstered furniture, quilted clothing, or filling material manufactured or wholesaled by the manufacturer or wholesaler and sold in this state may be withheld from sale until the manufacturer or wholesaler registers; provided, that in the event the manufacturer or wholesaler fails to register, the retailer may register in lieu of the manufacturer or wholesaler.

R70-101-14. Rules and Regulations for Filling Material.

A. All terms and definitions of all filling materials shall be those terms which have been submitted to and approved by ~~[F]the [National]Association of Bedding and Furniture Law Officials, Inc.,~~ except those terms and definitions listed in these rules.

B. ~~[Any plumage product which exceeds the permissible amount of residue, landfowl plumage, crushed or quill feathers or damaged feathers as provided for in the Federal Trade Commission's Guides for the Feather and Down Products Industry; Guides 6(b), 7, 8, and 10, Promulgated October 29, 1971, which is hereby incorporated by reference within this rule, shall state the entire amount of the components present on the label or tag.]The Association of Bedding and Furniture Law officials Down and Feather Labeling Standard is hereby incorporated by reference within this rule to establish the standards and procedures relating to down and feather filled articles of bedding, upholstered furniture, and filling materials to be used in the manufacture of such articles. Any plumage product which exceeds the permissible amount of residue, landfowl plumage, crushed or quill feathers or damaged feathers shall state the entire amount of each of those components present on the label or tag.~~

C. Cleanliness of Filling Materials.

All filling materials shall be reasonably clean and free from extraneous material, dirt, dust, filth, epidermis, excreta, disagreeable odors, or other contamination.

"Cleanliness" shall mean the oxygen number of any filling material consisting of whole feathers or down or a combination thereof; and the oxygen number of any filling material consisting of an admixture of feathers and down which contains five percent (5%) of crushed feathers shall not exceed 25 grams of oxygen per 100,000 grams of sample. (Oxygen number is considered as the amount, by weight, of oxidizable matter such as blood, excreta, fecal matter present.)

D. "Imperfect, irregular foam" shall mean any foam products which show major imperfections or that fall below the foam manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic ~~[term]name~~ of the foam.

E. "Imperfect, irregular fibers" shall mean fibers that have imperfections or that fall below the fiber manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic ~~[term]name~~ of the fiber.

F. The terms ~~[p]"Prime", [s]"Super", [n]"Northern"~~ and other terms of similar import shall not be used unless the fill can be proved to be of superior quality and meet the terms of the qualifying statement. Industry shall be responsible for proving to the Department that the fill is superior to the industry standard rating of 550 cubic inches of fill power.

R70-101-15. Products Not Intended for Uses Subject to These Rules.

A. The Commissioner hereby excludes from these rules all textile fiber products related to quilted clothing except:

1. Articles of ~~[quilted]down, feather, or fiber filled~~ clothing.
2. Down, feather or ~~[and]~~ fiber filled hats and hoods.
- ~~[3. Down and fiber filled hoods.~~

~~—4]3. Down, feather or [filled and] fiber filled slippers and booties with fabric outer-covering.~~

- ~~[5]4. Down, feather or [and] fiber filled gloves.~~
- ~~[6]5. Bulk filling material used in the above.~~

KEY: quality control

~~[February 15, 1997]2001~~

4-10-3

Notice of Continuation December 18, 1996



Commerce, Occupational and
Professional Licensing
R156-3a
Architect Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23350

FILED: 03/08/2001, 12:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Board determined that changes need to be made in the rule to delete grandfather provisions that expired in 2000.

SUMMARY OF THE RULE OR CHANGE: In Section R156-3a-102 - Definitions: added the initials for each division of the National Council for Architectural Registration Board (NCARB) Architectural Registration Examination (ARE). In the definition Subsection R156-3a-102(10), deleted that program of diversified practical experience meant the training standards and requirements set forth in the NCARB Circular of Information and that it was completed in a minimum of three years. Added to the definition Subsection R156-3a-102(10), that current licensure in a recognized jurisdiction would meet the program of diversified practical experience requirements. In definition Subsection R156-3a-102(11)(c), deleted the word "substantially" when referring to an equivalent architectural examination to the ARE. In Section R156-3a-301 - Architecture Program Criteria: added the name of the National Architectural Accrediting Board (NAAB) and added the Canadian Architectural Certification Board (CACB) as architectural program accrediting Boards. With respect to program equivalency, the option of having a report prepared by or under the direction of the dean of an architecture program was deleted. Wording was added to Subsection R156-3a-102(2)(a), clarifying a comprehensive report prepared by Education Evaluation Services for Architects (EESA) may be necessary if educated in a foreign country. In Section R156-3a-302 - Program of Diversified Practical Experience: deleted provisions of passing divisions of the ARE and when practical experience must be obtained. Added that a program of practical diversified practical experience can be demonstrated by the following: documentation of completion of Intern Development Program (IDP); or documentation of current licensure in a recognized

jurisdiction. In Section R156-3a-303 - Examination Requirements: deleted provisions of passing divisions of the ARE and when practical experience must be obtained. Changes were also made in Section R156-3a-303 to require all applicants for licensure as an architect to pass the ARE examination. Deleted the provision that the Architects Licensing Board could waive specific divisions of the ARE for endorsement applicants. Section R156-3a-304 regarding qualifications for licensure prior to the 1986 amendments to the Architect Licensing Act and its deadlines was deleted in its entirety as the time period for this section expired in mid-2000. In Section R156-3a-401 - Unprofessional Conduct: updated the NCARB Rules of Conduct booklet to the July 2000 edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-3a-101, and Subsections 58-1-106(1) and 58-1-202(1)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the July 1997 edition of the NCARB Rules of Conduct, and adds the July 2000 edition of the NCARB Rules of Conduct

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division will incur only minimal costs, approximately \$50, to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.

❖OTHER PERSONS: Those applicants who did not meet the expiration deadline to complete licensure by experience only will now be required to complete an accredited architectural degree to qualify for licensure. There are an estimated 10 applicants who will now have to complete a master's degree in architecture if they want to become licensed. The average cost to the applicant to complete the degree requirements is approximately \$15,000 for an aggregate cost of \$150,000. It should be noted that this cost would only be incurred if any of those 10 applicants who missed the experience only deadline wanted to obtain licensure as an architect. The cost would not be incurred if the applicant had decided not to proceed with licensure as an architect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those applicants who did not meet the expiration deadline to complete licensure by experience only will now be required to complete an accredited architectural degree to qualify for licensure. There are an estimated 10 applicants who will now have to complete a masters degree in architecture if they want to become licensed. The average cost to the applicant to complete the degree requirements is approximately \$15,000 for an aggregate cost of \$150,000. It should be noted that this cost would only be incurred if any of those 10 applicants who missed the experience only deadline wanted to obtain licensure as an architect. The cost would not be incurred if the applicant had decided not to proceed with licensure as an architect.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In 1986 the Architect Licensing Act was amended to require a degree in architecture from an accredited institution. Prior to that time, a person could be approved to train to be licensed with only a high school education and qualifying experience. By rule, the Division grandfathered all persons already approved to seek licensure under the prior statute, and gave them 14 years to qualify. The provisions extending the lesser educational requirements expired on June 1, 2000, and this amendment is for the purpose of eliminating the expired provisions. The adoption of this rule will have no financial impact upon the regulated, since it only eliminates a provision which expired by its own terms in mid-2000. There currently are an estimated 10 persons who were approved to seek licensure under the pre-1986 provisions who have either not completed the requirements or have ceased pursuing licensure. It is estimated that any of these individuals who attempt to become qualified by obtaining a degree will expend up to \$15,000, depending upon their current level of education. Ted Boyer, Jr., Executive Director

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Fairhurst at the above address, by phone at (801) 530-6621, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.dfairhur@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 04/26/2001, 9:00 a.m., 160 East 300 South, Conference Room 428 (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: Laura Poe, Acting Director

R156. Commerce, Occupational and Professional Licensing.

R156-3a. Architect Licensing Act Rules.

R156-3a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 3a, as used in Title 58, Chapters 1 and 3a or these rules:

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the IDP Committee created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "Divisions of the ARE" mean:

(a) pre-design (PD): satisfied by passing Division A between 1983 and 1996;

(b) site planning (SP): satisfied by passing both Division B-Written and Division B-Graphic between 1988 and 1996; or by passing Division B between 1983 and 1987;

(c) building planning (BP): satisfied by passing Division C between 1983 and 1996;

(d) building technology (BT): satisfied by passing Division C between 1983 and 1996;

(e) general structures (GS): satisfied by passing Division D/F between 1988 and 1996; or by passing both Division D and Division F between 1983 and 1987;

(f) lateral forces (LF): satisfied by passing Division E between 1983 and 1996;

(g) mechanical and electrical systems (ME): satisfied by passing Division G between 1983 and 1996;

(h) materials and methods (MM): satisfied by passing Division H between 1983 and 1996; and

(i) construction documents and services (CD): satisfied by passing Division I between 1983 and 1996.

(5) "EESA" means the Education Evaluation Services for Architects.

(6) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and these rules means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

(7) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(2) means a NCARB approved training program.

(8) "NAAB" means the National Architectural Accrediting Board.

(9) "NCARB" means the National Council of Architectural Registration Boards.

(10) "Program of diversified practical experience" as used in Subsection 58-3a-302(1)(e) means:

(a) ~~[the training standards and requirements set forth in the 1995-96 edition of the NCARB Circular of Information No. 1, Appendix A and Appendix B, which is hereby adopted as a part of these rules and incorporated by reference, completed in a minimum of three years]current licensure in a recognized jurisdiction;~~ or

(b) the training standards and requirements set forth in the Intern Development Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any state, district, territory of the United States, or any foreign country who issues licenses for architects, and whose licensure requirements include:

(a) a bachelors or post graduate degree in architecture or equivalent education as set forth in Subsection R156-3a-301(2);

(b) a program of diversified practical experience as set forth in Subsection R156-3a-102(10), or an equivalent training program; and

(c) passing the ARE or passing a professional architecture examination that is ~~[substantially]~~equivalent to the ARE.

(12) "Responsible charge" as used in Subsections 58-3a-102(7), 58-3a-302(2)(d)(iv) and 58-3a-304(6) means direct control and management by a principal over the practice of architecture by an organization.

(13) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-3a-401.

R156-3a-301. Qualifications for Licensure - Architecture Program Criteria.

In accordance with Subsection 58-3a-302(1)(d), the architecture program criteria are established as follows.

(1) The architecture program shall be accredited by either the National Architectural Accrediting Board (NAAB), or the Canadian Architectural Certification Board (CACB), or an architectural program equivalent to a NAAB accredited program.

(2) Equivalency shall be documented by submitting ~~[any]~~one of the following:

(a) ~~[a report prepared by or under the direction of the Dean of an architecture program accredited by NAAB stating that the applicant has successfully completed course work that is equivalent to the course work in a NAAB accredited program;~~

~~—(b)—[if educated in a foreign country, a comprehensive report prepared by EESA stating that the applicant has successfully completed an educational program]course work] that is equivalent to the [course work in a]NAAB accredited educational program; or~~
(c) [a] a current NCARB Council Record.

R156-3a-302. Qualifications for Licensure - Program of Diversified Practical Experience.

In accordance with Subsection 58-3a-302(1)(e), the program of diversified practical experience requirement is established as follows.

(1) ~~[An applicant who has passed at least one division of the ARE before July 1, 1996, shall submit documentation of completion of a program of diversified practical experience.~~

~~—(2) An applicant who has not passed at least one division of the ARE before July 1, 1996, shall s]Submit documentation of completion of [an]IDP; or~~

(2) submit documentation of current licensure in a recognized jurisdiction.

R156-3a-303. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-3a-302(1)(f), an applicant for licensure as an architect shall pass the following examinations:

(a) as part of the application for licensure, pass all questions on the open book, take home Utah Law and Rule Examination; and

(b) all divisions of the ARE as defined in Subsection R156-3a-102(4) with a passing score as established by NCARB~~in accordance with the following:~~

~~— (i) An applicant who has passed at least one division of the ARE before July 1, 1996, may continue to take the ARE without first completing diversified practical experience;~~

~~— (ii) An applicant who has not passed at least one division of the ARE before July 1, 1996, must complete an IDP before being permitted to take the ARE].~~

(2) In accordance with Subsection 58-3a-302(2)(e), an applicant for licensure by endorsement shall pass the following examinations:

(a) as part of the application for licensure, pass all questions on the open book, take home Utah Law and Rule Examination; and

(b) ~~[any previous edition of the ARE not defined in Subsection R156-3a-102(4); or~~

~~— (c) based upon review of the applicant's experience by the board, pass one or more divisions of the ARE with a passing score established by NCARB, as specified by the division in collaboration with the board]all divisions of the ARE as defined in Subsection R156-3a-102(4) with a passing score as established by NCARB.~~

[R156-3a-304. Qualifications for Licensure Prior to the 1986 Amendments to the Architect Licensing Act - Deadlines:

~~— (1) Persons who were approved by the division to qualify for licensure by completing the education and experience requirements established by law and rule in effect prior to the 1986 legislative amendments to Title 58, Chapter 3, Architects Licensing Act, have until June 1, 2000 to become licensed without the necessity of completing the education and experience requirements set forth in Subsections 58-3a-302(1)(d) and Sections R156-3a-301 and R156-3a-302.~~

~~— (2) The education and experience requirements applicable to persons approved pursuant to Subsection (1) are as follows:~~

~~— (a) graduation from high school and completion of 13 years of diversified practical experience approved by the board;~~

~~— (b) graduation with a four year non-accredited degree in architecture and completion of five years of diversified practical experience approved by the board; or~~

~~— (c) completion of a combination of 11 years of education and experience set forth as follows:~~

~~— (i) up to a maximum of four years of college or university course work may be approved by the board;~~

~~— (ii) the applicant may receive one year of credit for each 30 semester hours or equivalent quarter hours of college or university credits successfully earned;~~

~~— (iii) the remaining years may be completed through a program of diversified practical experience approved by the board.~~

R156-3a-401. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report, or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, report, or set of construction plans to be complete and final; or

(b) a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise reasonable charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the July [1997]2000 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference.

KEY: architects, licensing
[February 18, 1998]2001

58-3a-101
58-1-106(1)
58-1-202(1)

◆ ————— ◆
Corrections, Administration
R251-709
Transportation of Inmates

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE No.: 23540
 FILED: 03/02/2001, 11:35
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is to allow women inmates some privacy during certain medical procedures and consultations. This rule was also changed to require a higher ranking officer to contact the transporting airline regarding inmate transportation issues.

SUMMARY OF THE RULE OR CHANGE: Officers shall remain with the inmate at all times except for inmates of the opposite sex during certain medical procedures. The officer shall remain either outside the door, if there are no escape routes in the room, or on the opposite side of a privacy curtain if there are escape routes in the room. The other change requires a transportation lieutenant, captain, or chief to contact the transporting airline regarding inmate transportation issues.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-10

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** There will be no impact on the state budget because the change simply clarifies or slightly modifies the Department's current internal process.

❖**LOCAL GOVERNMENTS:** There will be no impact on local government because the change simply clarifies or slightly modifies the Department's current internal process.

❖**OTHER PERSONS:** There will be no impact on other persons because the change simply clarifies or slightly modifies the Department's current internal process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes provide greater clarity about maintaining privacy for inmates of the opposite sex during certain medical procedures. The changes also require a higher ranking corrections officer to contact an outside agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses.

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

Corrections
Administration
Suite 304
6100 South Fashion Boulevard
Murray, UT 84107, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Pam Elliott at the above address, by phone at (801) 265-5514, by FAX at (801) 265-5523, or by Internet E-mail at crdeptdo.crdept.pelliott@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: Mike Chabries, Executive Director

R251. Corrections, Administration.
R251-709. Transportation of Inmates.
R251-709-1. Authority and Purpose.

- (1) This rule is authorized under Section 64-13-10.
- (2) This rule addresses requirements regarding the transportation of inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department.

R251-709-2. Definitions.

"Restraint" means handcuffs, handcuff cover, locking devices, leg irons, waist chains or other locking and restraining devices.

"Run" means any transport of an inmate off prison property.

R251-709-3. Policy.

It is the policy of the Department that during the transportation of inmates the primary goal is to ensure adequate security to prevent escapes and to prevent harm to officers or other persons.

R251-709-4. Court Transportation.

(1) Inmates shall not be allowed to visit with relatives, friends or members of the general public during transportation, while in a medical facility, courtroom, or while waiting, in transit to or from a medical facility or courtroom.

(2) Requests from attorneys to detain or temporarily relocate inmates for consultations, visits with spouse, parents, or other

family members, shall be denied unless the presiding judge specifically orders the visits.

(3) Attorneys requesting consultation with inmates after a hearing may do so for five minutes in a court holding cell unless the presiding judge specifically orders otherwise.

(4) The inmate's attorney may provide civilian clothing for inmates appearing in a jury trial.

R251-709-5. Medical Security Procedures.

(1) The transportation officer shall maintain custody of the inmate at all times during medical transportation runs. ~~If, during the medical consultations, the doctor requests the officer to leave the room and the room has no escape routes, the officer may wait just outside the door but, if the room has an escape route, the officer shall remain with the inmate.]~~ Exceptions may be made when dealing with inmates of the opposite sex during compromising procedures, (i.e., pap smears, mammograms, etc.). When an exception is made, the officer shall remain immediately outside the door (if there are no windows or other escape routes in the room) or on the opposite side of the privacy curtain.

(2) The transportation officer shall remove a particular restraint upon the doctor's orders if the removal of that restraint is required to perform a medical procedure; only that particular restraint shall be removed and it shall be immediately reapplied upon completion of the medical procedure.

(3) Except in life-threatening emergencies, the transportation officer shall not assist nor participate in any medical procedure or other assistance to patients or inmates.

R251-709-6. Transporting by Air.

When transporting by air, the transportation ~~officer~~ lieutenant, captain, or chief shall contact the transporting airline prior to the transportation run to confirm their policies regarding inmate restraints, boarding and alighting policies, firearms on the aircraft, and other inmate transportation issues.

KEY: prisons, corrections, security measures
[January 21, 1997]2001
Notice of Continuation November 7, 1996

64-13-10



Environmental Quality, Radiation
Control

R313-36

Special Requirements for Industrial
Radiographic Operations

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 23552
FILED: 03/09/2001, 14:34
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is changed due to recent changes to 10 CFR 34 which is incorporated by reference in this rule.

SUMMARY OF THE RULE OR CHANGE: The changes incorporate the most recent version of 10 CFR 34 by reference, and delete redundant compliance dates from the rule that are present in the current version of 10 CFR 34.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 10 CFR 34, 2001 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no anticipated costs or savings since these changes will not result in any modification of the current regulations.

❖LOCAL GOVERNMENTS: This rule does not impact local government in that local government does not regulate radioactive material licensees.

❖OTHER PERSONS: The changes will not affect other persons since new regulatory requirements are not proposed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes will not affect other persons since new regulatory requirements are not proposed and will not result in any anticipated compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact is expected on businesses since the changes do not impose any new regulatory requirements.

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

Environmental Quality
Radiation Control
State of Utah Office Park, Building 2
168 North 1950 West
PO Box 144850
Salt Lake City, UT 84114-4850, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Philip Griffin at the above address, by phone at (801) 536-4250, by FAX at (801) 533-4097, or by Internet E-mail at pgriffin@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 05/11/2001

AUTHORIZED BY: William J. Sinclair, Executive Secretary

R313. Environmental Quality, Radiation Control.**R313-36. Special Requirements for Industrial Radiographic Operations.****R313-36-1. Purpose and Authority.**

(1) The rules in R313-36 prescribe requirements for the issuance of licenses and establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

(3) The requirements of R313-36 are in addition to, and not in substitution for, the other requirements of these rules.

R313-36-2. Scope.

(1) The requirements of R313-36 shall apply to licensees using radioactive materials to perform industrial radiography.

(2) The requirements of R313-36 shall not apply to persons using electronic sources of radiation to conduct industrial radiography.

R313-36-3. Clarifications or Exceptions.

For purposes of R313-36, 10 CFR 34 (~~1998~~2001), is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: "34.1", "34.5", "34.8", "34.11", "34.121", and "34.123";

(2) The exclusion of "10 CFR 34.45(a)(9)";

(3) The exclusion of the following 10 CFR references within 10 CFR 34: "21", "30.7", "30.9", and "30.10";

(4) The exclusion of "offshore" in 10 CFR 34.3 definition for "offshore platform radiography";

(5) The substitution of the following wording:

(a) "Utah Radiation Control Rules" for the reference to:

(i) "Commission's regulations", except as stated in R313-36-3(5)(f);

(ii) "Federal regulations"; and

(iii) "NRC regulations";

(b) "Executive Secretary" for the reference to "Commission", except as stated in 10 CFR 34.20 and R313-36-3(5)(c)(iv);

(c) "Executive Secretary, U.S. Nuclear Regulatory Commission, or an Agreement State" for references to:

(i) "NRC or an Agreement State";

(ii) "Commission or by an Agreement State";

(iii) "Commission or an Agreement State"; and

(iv) "Commission" in 10 CFR 34.43(a)(2);

(d) "License" for reference to "NRC license(s)";

(e) In 10 CFR 34.27(d), "reports of test results for leaking or contaminated sealed sources shall be made pursuant to R313-15-1208.", for reference to the following statements:

(i) "A report must be filed with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, within 5 days of any test with results that exceed the threshold in this subsection, describing the equipment involved, the test results, and the corrective action taken."; and

(ii) "A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter "Standards for Protection Against Radiation.";

(f) In 10 CFR 34.27(d), "R313-15-401(6)" for the reference to "Commission regulations";

(g) In 10 CFR 34.89, "[—]a U.S. Nuclear Regulatory Commission or an Agreement State" for the reference to "the Agreement State";

(h) In 10 CFR 34.101(a), "Executive Secretary" for the following wording:

(i) "U.S. Nuclear Regulatory Commission, Division of Industrial and Medical Nuclear Safety, Washington, D.C. 20555-0001, with a copy to the Director, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001";

(i) In 10 CFR 34.101(c), "Executive Secretary" for the reference to "appropriate NRC regional office listed in 10 CFR 30.6(a)(2) of this chapter";

(j) In Item 12, Section I of Appendix A to 10 CFR 34, "Executive Secretary, the U.S. Nuclear Regulatory Commission and other independent certifying organizations and/or Agreements States" for the reference to "Commission and other independent certifying organizations and/or Agreement States";

(k) In Item 1, Section II of Appendix A to 10 CFR 34, "equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations" for the reference to "equivalent Agreement State regulations"; and

(l) In Item 2(c), Section II of Appendix A to 10 CFR, "a Utah, U.S. Nuclear Regulatory Commission, or an Agreement State licensee" for the reference to "an Agreement State or a NRC licensee"; and

(6) The substitution of the following R313 references for specific 10 CFR references:

(a) "R313-12-55(1)" for reference to "10 CFR 34.111";

(b) "R313-15" for the reference to "10 CFR 20";

(c) "R313-15-601(1)(a)" for the reference to "10 CFR 20.1601(a)(1)";

(d) "R313-15-902" for the reference to "10 CFR 20.1902";

(e) "R313-15-903" for the reference to "10 CFR 20.1903";

(f) "R313-15-1203" for the reference to "10 CFR 20.2203";

(g) "R313-18" for the reference to "10 CFR 19";

(h) "R313-19-30" for the reference to "10 CFR 150.20";

(i) "R313-19-50" for the reference to "10 CFR 30.50";

(j) "R313-19-100" for the reference to "10 CFR 71", "10 CFR 71.5", and "49 CFR 171 to 173";

(k) "R313-22-33" for the reference to "10 CFR 30.33"; and

(l) "R313-36" for the reference to "10 CFR 34." [~~and~~

(7) The substitution of the following dates:

(a) In 10 CFR 34.42(d) and 10 CFR 34.43(a)(2), "June 27, 1999" for the date "May 28, 1999."

(b) In 10 CFR 34.43(h), "June 27, 1998" for the date "May 28, 1998."

KEY: industry, radioactive material, licensing, surveys

~~[December 12, 1997]~~2001

19-3-104

Notice of Continuation May 15, 1997

19-3-108



Environmental Quality, Solid and Hazardous Waste

R315-101

Cleanup Action and Risk-Based Closure Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23554

FILED: 03/14/2001, 10:03

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule change intends to correct the rule where the requirements are contradictory, to correct inadvertent omissions when the rule was drafted, and to identify how the Division of Solid and Hazardous Waste intends to interpret the results of the ecological risk assessment in decision-making for site management.

SUMMARY OF THE RULE OR CHANGE: As written, Subsection R315-101-6(d) and Subsection R315-101-6(e) are inconsistent regarding when corrective action would be required for non-carcinogens that are evaluated by the calculation of a hazard index. When a site is contaminated with non-carcinogens only, if the hazard index is less than one under the residential exposure scenario in Subsection R315-101-5.2(b)(1), no further action is required (Subsection R315-101-6-(c)(1-2)). If the hazard index is greater than one using the exposure scenario in Subsection R315-101-5.2(b)(2) (actual use, e.g., industrial), Subsection R315-101-6(e) requires corrective action. However, Subsection R315-101-6(d) implies that corrective action is required if the residential scenario hazard index is greater than one. As written, site management for non-carcinogens is limited to either corrective action or no further action; institutional controls are not an option. To correct the inconsistency, the Division of Solid and Hazardous Waste (DSHW) proposes deleting the phrase "and the Hazard Index is 'less than one using' both exposure scenarios" in Subsection R315-101-6(d) and inserting language consistent with the criteria for hazardous waste management units as described in Subsection R315-101-6(c)(3). Decision-making at the majority of sites in Utah has been based on carcinogens so the existing discrepancy has not had adverse impacts to site management. The existing rule inadvertently does not address site management when calculated risks and hazards are exactly at the transition points. For instance, under the existing rule, site management for cancer risks of exactly 1×10^{-6} or a hazard index of exactly one for Subsection R315-101-5.2(b)(1) is not addressed. Less-than-or-equal-to or greater-than-or-equal-to language has been added to the draft rule to correct this omission. The current rule requires

that an ecological evaluation be conducted in accordance with Subsection R315-101-5.3(a)(8) but does not describe how the outcome should be considered in determining appropriate site management. The proposed changes describe how the Executive Secretary will consider the results of the ecological assessment in determining appropriate site management. The proposed changes do not attempt to identify "bright line" criteria for evaluating ecological impacts. Ecological risk assessment methods are currently immature when compared to human health methodology and the United States Environmental Protection Agency (USEPA) has not determined "bright line" criteria. The DSHW recommends that the language be added to inform affected parties how the results of the required ecological assessment will be evaluated.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or savings impact.
 - ❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or savings impact.
 - ❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change is a clarification of how the rule is implemented.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change is a clarification of how the rule is implemented.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

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

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 05/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-101. Cleanup Action and Risk-Based Closure Standards. R315-101-1. Purpose, Applicability.

(a) Purpose. R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved. The procedures in this rule also provide for continued management of sites for which minimal risk-based standards cannot be met.

(b) Applicability.

(1) R315-101 is applicable to any responsible party involved in management of a site contaminated with hazardous waste or hazardous constituents. This rule does not apply to a site that has been or will be cleaned to background.

(2) In the event of a release of hazardous waste or material which, when released, becomes hazardous waste, these requirements apply if the responsible party fails to clean up all the released material and any residue or contaminated soil, water or other material resulting from the release as required by R315-9-3. If the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the requirements of R315-9-3 shall be considered met.

(3) The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of R315-7-14 and R315-8-7 prior to implementation of any activities described in R315-101. The requirements of R315-3-1.1(e)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If these risk exposure criteria are met, a request for a risk-based closure may be submitted to the Executive Secretary for review.

(4) If the risk present at the site is greater than the exposure limit as defined in R315-101-1(b)(2) or (3) or the Executive Secretary determines that ecological effects may be significant, then a risk-based closure will not be granted and appropriate management will be required and may include corrective action, post-closure care, monitoring, deed restrictions, and security of the site. For determinations of appropriate corrective action or management activities at a site, the following criteria shall be considered in order of importance:

- (a) The impact or potential impact of the contamination on the human health;
- (b) The impact or potential impact of the contamination on the environment;
- (c) The technologies available for use in clean-up; and
- (d) Economic considerations and cost-effectiveness of clean-up options.

R315-101-6. Risk Management: Site Management [Permit] Plan and Closure Equivalency.

(a) A site management plan which is supported by the findings in the approved risk assessment report shall be submitted to the Executive Secretary within 60 days of approval of the risk assessment report. This plan may be submitted along with the risk assessment report and must include a schedule for implementation.

(b) The Executive Secretary shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Executive Secretary finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall then submit a revised site management plan addressing the comments of the Executive Secretary within an appropriate time frame as specified by the Executive Secretary. The Executive Secretary shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Executive Secretary shall follow the requirements of R315-101-7 prior to issuance of final approval. The approved site management plan shall be implemented according to the approved schedule. If the Executive Secretary rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Executive Secretary in a statement of disapproval.

(c)(1) The site management plan may contain a no further action option only if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8);

(2) The requirements of R315-3-1.1(e)(5) and (6) shall be deemed met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If this risk exposure criterion is met, a request for a risk-based closure may be submitted; or

(3) If the risk present at the site is greater than or equal to 1×10^{-6} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based upon the exposure assessment conducted in accordance with R315-101-5.2(b)(1), or the Executive Secretary determines that ecological effects may be significant, a risk-based closure will not be granted. The responsible party shall then submit a site management plan fulfilling the requirements of R315-101-6(d) or (e) as applicable.

(d) If the level of risk present at the site is less than 1×10^{-4} for carcinogens and a hazard index is "less than or equal to one" for the risk assessment conducted in accordance with R315-101-5.2(b)(2) but greater than or equal to 1×10^{-6} for carcinogens or a hazard index is greater than one for a risk assessment conducted in accordance with R315-101-5.2(b)(1) [and the Hazard Index is "less than one" using both exposure scenarios] or the Executive Secretary determines that ecological effects may be significant, the site

management plan may contain, but is not required to contain, procedures for corrective action. The site management plan shall contain appropriate management activities e.g., monitoring, deed notations, site security, or post-closure care, as determined on a case-by-case basis in accordance with criteria identified in R315-101-1(b)(4).

(e) The site management plan must contain procedures for corrective action if the level of risk present at the site is greater than or equal to 1×10^{-4} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(2) or the Executive Secretary concludes that corrective action is required to mitigate ecological effects. For determination of appropriate corrective action the criteria identified in R315-101-1(b)(4) shall be considered.

(f) If hazardous constituents are present only in groundwater at the site, and if the hazardous constituents are listed in Table 1 of R315-8-6.5, the Maximum Concentration Levels listed in Table 1 can be presented in lieu of health risk estimates for those constituents. The RME for Table 1 constituents must be determined in accordance with approved site characterization methods listed in R315-101-4.

KEY: hazardous waste

[July 15, 2000]2001

Notice of Continuation June 13, 1997

19-6-105

19-6-106



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-63

Medicaid Policy for Pharmacy Reimbursement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23551

FILED: 03/09/2001, 09:21

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to establish Medicaid pharmacy reimbursement criteria.

SUMMARY OF THE RULE OR CHANGE: The Medicaid Pharmacy Program reimbursement criteria will be established by rule. The current dispensing fee will be increased by thirty cents for both rural and urban pharmacy providers. The current payment of Average Wholesale Price minus 12% will remain the same.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Department will incur a cost of approximately \$700,000 annually. This loss will be offset by other savings generated within the pharmacy program, including implementing new federal product pricing and paying only one dispensing fee per month.

❖LOCAL GOVERNMENTS: This rule does not apply to local government, so there is no budget impact.

❖OTHER PERSONS: Pharmacy providers will realize an increase in reimbursement of about \$700,000 per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any compliance costs for other persons other than that described in the cost or savings for state budget, local governments, and other persons above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Although this rule change will generate an increase in reimbursement to pharmacy providers, this will be offset by other reductions in Medicaid payments to pharmacies. Rod L. Betit

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

RaeDell Ashley at the above address, by phone at (801) 538-6495, by FAX at (801) 538-6099, or by Internet E-mail at rashley@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

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

R414-63. Medicaid Policy for Pharmacy Reimbursement.

R414-63-1. Introduction and Authority.

(1) The Medicaid Policy for reimbursement of dispensing fees for pharmacy providers was achieved through negotiations with representatives of the pharmacy industry.

(2) This rule is authorized under Chapter 26-18.

R414-63-2. Pharmacy Reimbursement.

For each prescription filled for a Medicaid recipient the pharmacy provider shall receive:

(1) the average wholesale price for the medication minus 12%; and

(2) a dispensing fee in the amount of \$3.~~60~~90 for urban providers and \$4.~~40~~40 for rural providers. ~~[This amount reflects a reduction of thirty cents for both urban and rural providers when this rule takes effect.]~~

[**R414-63-3. Periodic Evaluation of Reimbursement.**

~~— (1) This decrease to the dispensing fee may be adjusted if other areas can be identified in the pharmacy program where significant cost saving measures can be implemented.~~

~~— (2) The Department shall periodically evaluate reimbursement to pharmacy providers and make adjustments to reimbursement as appropriate.]~~

KEY: medicaid
[January 17,]2001

26-18



Insurance, Administration
R590-207
Health Agent Commissions for Small
Employer Groups

NOTICE OF PROPOSED RULE

(New)

DAR FILE No.: 23559

FILED: 03/15/2001, 16:46

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to establish guidelines relating to a carrier's commission structure for a small group health insurance agent in the small employer group market. This affects access to health insurance coverage for small employer groups.

SUMMARY OF THE RULE OR CHANGE: The rule applies to all licensed health insurers doing business in Utah. It requires that they not set agent commission rates that directly or indirectly create a restriction, hindrance, or barrier to access to coverage for the smallest group identified in the commission schedule. Nor are the commissions to be designed to avoid the requirements of guarantee issue or renewal in the marketing of health insurance to small business owners. Penalties are set for those in violation of the rule as specified in Section 31A-2-308. The Compliance Date section of the rule will provide the industry with 30 days to comply with the rule after the end of the comment period.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-30-104

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The rule will not require insurers to file forms with the department resulting in additional income to the department nor will it result in additional cost for the department. It is a revenue and cost neutral.

❖LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency to which all fees are paid by its licensees.

❖OTHER PERSONS: Health insurers in compliance with the law in Title 31A, Chapter 30 will not be affected by this law. Only those insurers found to be in violation of this rule and Title 31A, Chapter 30, by lowering their agent commission rates in an attempt to avoid insuring small employer groups, will be affected. The penalty, as defined in Section 31A-2-308, will vary from case to case.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Health insurers in compliance with the law in Title 31A, Chapter 30 will not be affected by this law. Only those insurers found to be in violation of this rule and Title 31A, Chapter 30, by lowering their agent commission rates in an attempt to avoid insuring small employer groups, will be affected. The penalty, as defined in Section 31A-2-308, will vary from case to case.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on the majority of health insurers that are already in compliance with Title 31A, Chapter 30. Putting it into effect will increase the availability of insurance for small employer groups.

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

Insurance Administration
3110 State Office Building
Salt Lake City, UT 84114, 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 jdmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 04/24/2001, 10:00 a.m., Room 4112 of the State Office Building, behind the Capitol, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/04/2001

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-207. Health Agent Commissions for Small Employer Groups.

R590-207-1. Authority.

This rule is issued and based upon the authority granted the commissioner under Sections 31A-2-201(3)(a) and 31A-30-104(6).

R590-207-2. Purpose.

The purpose of this rule is to establish guidelines relating to a carrier's commission structure for a small group health insurance agent in the small employer group market. This affects access to health insurance coverage for small employer groups.

R590-207-3. Applicability.

This rule applies to all licensed insurers doing health insurance business under Title 31A, Chapter 30, the Individual and Small Employer Health Insurance Act.

R590-207-4. Definitions.

The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

R590-207-5. Commission Schedule Policy.

A health insurance carrier shall not structure agent commission rates that, directly or indirectly, create a restriction, hindrance, or barrier to access to coverage for the smallest group identified in the commission schedule.

The commission for the smallest size group in the commission schedule may not be designed to avoid, directly or indirectly, the requirements of guarantee issue or renewal in the marketing of health insurance to small business owners.

R590-207-6. Penalties.

Any carrier with a commission structure that is not in compliance with this rule, after the Compliance Date, will be considered in violation of this rule and will be subject to the penalties provided for in Section 31A-2-308.

R590-207-7. Compliance Date.

This rule is in effect on the date stated in the Notice of Effective Date form relating to this rule that the department files with the Division of Administrative Rules (the "effective date"). The effective date will follow a period of 30 days during which interested parties will have time to prepare to be in compliance with this rule. It will also be the date on which the department will begin enforcing this rule. The Notice of Effective Date form is published in the "Utah State Bulletin", a publication of the Division of Administrative Rules. The "Utah State Bulletin" is found at the website, www.rules.state.ut.us. In addition, the effective date may be found at the department's website, www.insurance.state.ut.us, by clicking on the "News and Bulletins" button and scrolling down to the rules category and clicking on the appropriate reference to the rule.

R590-207-8. Severability.

If any provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance law
2001

31A-2-201
31A-2-202



Insurance, Administration
R590-208
 Uniform Application for Certificates of
 Authority

NOTICE OF PROPOSED RULE

(New)
 DAR FILE NO.: 23560
 FILED: 03/15/2001, 16:47
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to adopt a nationally uniform application form in the licensing of insurance companies. This uniformity will result in consistent application requirements in all states.

SUMMARY OF THE RULE OR CHANGE: The rule adopts the uniform National Association of Insurance Commissioner's Certificate of Authority application form.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-2-202

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The rule will permit insurance companies to utilize a standard application to obtain a certificate of authority in Utah. It will not result in any additional cost or income to the department. It is revenue and cost neutral.

❖LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency to which all fees are paid by its licensees.

❖OTHER PERSONS: The rule impacts only insurance companies by allowing the use of a standard and uniform application, an insurance company will realize significant cost savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule permits insurance companies to use a standard and uniform application to be admitted in Utah. Use of such a form will streamline the application process and make it more efficient. No compliance costs will be incurred.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact the rule will have on the insurance industry is significant. The uniform application is utilized by 26 other departments. This means an insurer will only be required to file its application in its state of domicile with the same material being available to all other participating departments. This will result in a significant reduction in application costs. It simplifies and streamlines the process of being authorized to write insurance in a state.

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

Insurance
 Administration
 3110 State Office Building
 Salt Lake City, UT 84114, 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 jdmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 06/20/2001

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-208. Uniform Application for Certificates of Authority.

R590-208-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(2), 31A-2-201(3)(a), and 31A-2-202(2) wherein the commissioner is empowered to administer and enforce Title 31A; to make administrative rules to implement the provisions of Title 31A; to prescribe forms for information needed to enforce Title 31A and to implement uniformity between states and other jurisdictions as may apply to the admission and organization of insurance companies in Utah.

R590-208-2. Purpose.

The purpose of this rule is ensure that the commissioner's requirements for domestic, foreign and alien insurer applications to obtain a certificate of authority in Utah shall be consistent with requirements of other states, the information included in the Uniform Certificate of Authority Primary Application, and the Uniform Certificate of Authority Expansion Application of the National Association of Insurance Commissioners.

R590-208-3. Applicability and Scope.

This rule shall apply to all applicants seeking to obtain a certificate of authority for an insurer or an application for an organization permit to organize an insurer under Title 31A, Chapters 5, 7, 8, 9, 10, or 14.

R590-208-4. Uniform Application for Admission as an Insurer.

In order to promote efficiency and uniformity between the Utah Insurance Department, its sister states and other jurisdictions, the commissioner hereby requires the information included in the Uniform Certificate of Authority Primary Application and Uniform Certificate of Authority Expansion Application of the National

Association of Insurance Commissioners shall be submitted in accordance with the requirements of Sections 31A-5-204, 31A-7-201, 31A-8-205, 31A-9-205, 31A-10-203, and 31A-14-201.

To the extent that the above sections require other information that is not required in these uniform applications, an applicant for a certificate of authority and organization permit shall furnish the additional information as a supplement to the information required in the uniform applications.

R590-208-5. Severability.

If a provision of this rule or its application to any person or circumstance is or for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance certificate of authority
2001

31A-2-201
31A-2-202



Labor Commission, Industrial
Accidents
R612-2-5
Regulation of Medical Practitioner Fees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23549
FILED: 03/08/2001, 09:18
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment incorporates the most current edition of the Utah Labor Commission's Medical Fee Guidelines and Codes, which designates specific Current Procedural Terminology (CPT-4) codes as global codes and clarifies restorative services billing codes.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment incorporates the most current edition of the Utah Labor Commission's Medical Fee Guidelines and Codes. The most current edition designates specific procedure codes as global fee codes instead of allowing separate billing for each service associated with the procedure. It also clarifies billing codes for specific restorative services.

(DAR Note: A corresponding 120-Day Emergency Rule is under DAR No. 23548 in this *Bulletin*, and is effective as of 03/08/2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-2-407

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah Labor Commission's Medical Fee Guidelines and Codes, March 8, 2001, edition

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: A savings of \$200,000 to \$300,000 in workers' compensation costs.

❖LOCAL GOVERNMENTS: A savings of \$300,000 to \$400,000 in workers' compensation costs.

❖OTHER PERSONS: A savings of approximately \$1,000,000 in workers' compensation costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be no compliance costs for affected persons. The proposed rule incorporates the most current edition of the Utah Labor Commission's Medical Fee Guidelines and Codes, which establishes global procedure codes, and will result in a reduction of compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: By correcting erroneous medical fee provisions that were included in the January 2001 version of the Utah Labor Commission's Medical Fee Guidelines and Codes, this amendment will result in savings of \$1,500,000 to employers and their insurance carriers. The amendment will not reduce fees for medical providers from the levels customarily paid under current practice, as established by the pre-January 2001 version of the Utah Labor Commission's Medical Fee Guidelines and Codes.

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

Labor Commission
Industrial Accidents
Third Floor, Heber M. Wells Building
160 East 300 South
PO Box 146610
Salt Lake City, UT 84114-6610, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joyce Sewell at the above address, by phone at (801) 530-6988, by FAX at (801) 530-6804, or by Internet E-mail at icmain.jsewell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: R. Lee Ellertson, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407:

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the treatment of an industrially injured employee.

2. Adopts and by this reference incorporates the non facility total unit value of the National Health Care Financing

Administration's (HCFA) "Resource-Based Relative Value Scale" (RBRVS), 2001 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 2001 edition, coding guidelines. The CPT-4 coding guidelines are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for an industrial injury or occupational disease, effective January 1, 2001:

Anesthesiology \$37.00 (1 unit per 15 minutes of anesthesia);
 Medicine \$40.00;

Pathology and Laboratory 150% of Utah's published Medicare carrier;

Radiology \$53.00;

Restorative Medicine \$40.00, with Utah code 97001 at a 0.8 relative value unit and Utah code 97002 at a 0.5 of relative value unit.

Surgery \$37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines \$58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of ~~January~~ ~~1~~ ~~2001~~ ~~March 8, 2001~~. The Utah Medical Fee Guidelines and Codes can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their industrial injuries or occupational diseases.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of industrial injured/ill patients.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

KEY: workers' compensation, fees, medical practitioner
~~January 1, 2001~~ **34A-2-101 et seq.**
Notice of Continuation June 15, 1998 **34A-3-101 et seq.**
34A-1-104



School and Institutional Trust Lands,
 Administration
R850-50-400
 Permit Approval Process

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23558

FILED: 03/15/2001, 15:16

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is being made in order to accommodate the agency's conversion to an accrual accounting system. The change allows for grazing income to be received and applied within a single fiscal year.

SUMMARY OF THE RULE OR CHANGE: The competitive grazing application process is currently tied to a May 1 - April 30 cycle; with a competitive application window of January 2 to March 1 for expiring permits. The agency is shifting the permit period to a July 1 - June 30 cycle in order to receive and apply grazing income within a single fiscal year. This suggests that the competitive application window, as stipulated in the rule, be changed to April 1 - April 30. The window has been shortened from two months to one month as there is no evidence that the length of the window is a factor in encouraging or inhibiting competitive applications.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a), and Section 53C-5-102

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** There are no anticipated costs or savings to the state as the amounts of the grazing fee payments have not changed; they have only been delayed by two months.

❖**LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as the amounts of the grazing fee payments have not changed; they have only been delayed by two months.

❖**OTHER PERSONS:** There are no anticipated costs or savings to other persons as the amounts of the grazing fee payments have not changed, they have only been delayed by two months. A slight savings could be realized by other persons due to their retention of their money for an additional two months.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs attached to this rule change because it only delays the deadline for making payment of grazing fees by two months. The shortened application window should not create any additional costs for the applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After soliciting input from the livestock industry, I am convinced that this proposal will have no fiscal impact on the livestock industry. David Terry

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

School and Institutional Trust Lands
 Administration

Suite 500
675 East 500 South
Salt Lake City, UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kevin S. Carter at the above address, by phone at (801) 538-5160, by FAX at (801) 355-0922, or by Internet E-mail at kcarter.tlmain@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: Kevin S. Carter, Assistant Director-Surface

R850. School and Institutional Trust Lands, Administration.

R850-50. Range Management.

R850-50-400. Permit Approval Process.

Applications shall be accepted on lands available for permitting under R850-50-300 or upon termination of an existing permit as follows:

1. On trust lands that are available for grazing, but are not subject to an existing permit, applications may be solicited through advertising or any other method the agency determines is appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from [~~January 2 to March 1~~]April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

3. If no competing applications are received, the person holding the expiring grazing permit shall have the right to renew the permit by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application shall do so on forms acceptable to the agency. Forms may be acquired at the offices listed in R850-6-200(2)(b). Applications shall include payment in the amount of the non-refundable application fee, and the one-time bonus bid. Bids shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

5. Applications shall be evaluated by the agency and shall be accepted only if the agency determines that the applicant's grazing activity shall not create unmanageable problems of trespass, range management, or access.

(a) For purposes of this evaluation adjoining permittees and lessees, adjoining property owners, or adjoining federal permittees shall be considered acceptable as competing applicants unless specific problems are clearly demonstrated.

(b) Applicants not meeting the requirements in (a) above, whose uses would not unreasonably conflict with the uses of other permittees of trust lands in the area, shall nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant is able to utilize the area

without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

6. An existing permittee shall have a preference right to permit the property provided he agrees to pay an amount equal to the highest competing application.

KEY: administrative procedure, range management

~~[September 1, 1995]~~May 2, 2001 53C-1-302(1)(a)(ii)

Notice of Continuation June 30, 1997 53C-2-201(1)(a)

53C-5-102



End of the Notices of Proposed Rules Section

Notices of Changes in Proposed Rules Begins on the Following Page

NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends May 1, 2001. At its option, the agency may hold public hearings.

From the end of the waiting period through July 30, 2001, 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 (1996); 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.

Natural Resources; Oil, Gas and
Mining; Coal
R645-301-700
Hydrology

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 23387
FILED: 03/15/2001, 14:51
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes made in this proposed rule are made in response to comments received on the proposed rule.

SUMMARY OF THE RULE OR CHANGE: These changes modify the type of water which is to be described in the probable hydrologic consequences statement of each coal mining and reclamation plan.

(DAR Note: This change in proposed rule has been filed to make additional changes to an amendment that was published in the January 1, 2001, issue of the *Utah State Bulletin*, on page 29. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-6.5
FEDERAL REQUIREMENT FOR THIS RULE: Pub. L. No. 95-87, The Surface Mining Control and Reclamation Act

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No change is anticipated at this time from these changes due to their small effect on the coal regulatory program's requirements.

❖LOCAL GOVERNMENTS: The changes made in these rule amendments make no demands of local governments, thus there will be little or no impact in this regard.

❖OTHER PERSONS: The changes made in these rule amendments to actual on-the-ground compliance measures for coal mining operations are minor, however there are some adjustments in the designated water to be described in the probable hydrologic consequences statement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The affected persons in this case would be coal mine operators, their compliance would not be changed significantly from these rule changes as no new demands or requirements are created from this action. The standard already exists at the federal level but the water to be described in the probable hydrologic consequences statement under the federal regulation is described as "drinking, domestic or residential" rather than "State Appropriated Water" as is provided for in this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Fiscal impact to business is neutral since federal rules of similar effectiveness prevail if state rules do not exist.

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

Natural Resources
Oil, Gas and Mining; Coal
Suite 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or by Internet E-mail at rdaniels@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 05/01/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 04/28/2001, 10:00 a.m., Suite 1040B, 1594 West North Temple, Salt Lake City, Utah 84114.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-301. Coal Mine Permitting: Permit Application Requirements.****R645-301-700. Hydrology.**

710. Introduction.

711. General Requirements. Each permit application will include descriptions of:

711.100. Existing hydrologic resources as given under R645-301-720.

711.200. Proposed operations and potential impacts to the hydrologic balance as given under R645-301-730.

711.300. The methods and calculations utilized to achieve compliance with hydrologic design criteria and plans given under R645-301-740.

711.400. Applicable hydrologic performance standards as given under R645-301-750.

711.500. Reclamation activities as given under R645-301-760.

712. Certification. All cross sections, maps and plans required by R645-301-722 as appropriate, and R645-301-731.700 will be prepared and certified according to R645-301-512.

713. Inspection. Impoundments will be inspected as described under R645-301-514.300.

720. Environmental Description.

721. General Requirements. Each permit application will include a description of the existing, premining hydrologic resources within the proposed permit and adjacent areas that may be

affected or impacted by the proposed coal mining and reclamation operation.

722. Cross Sections and Maps. The application will include cross sections and maps showing:

722.100. Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas. For UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, location and extent will include, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

722.200. Location of surface water bodies such as streams, lakes, ponds and springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

722.300. Elevations and locations of monitoring stations used to gather baseline data on water quality and quantity in preparation of the application;

722.400. Location and depth, if available, of water wells in the permit area and adjacent area; and

722.500. Sufficient slope measurements or contour maps to adequately represent the existing land surface configuration of proposed disturbed areas for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be measured and recorded to take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

723. Sampling and Analysis. All water quality analyses performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D. C. 20036.

724. Baseline Information. The application will include the following baseline hydrologic, geologic and climatologic information, and any additional information required by the Division.

724.100. Ground Water Information. The location and ownership for the permit and adjacent areas of existing wells, springs and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions will include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Ground-water quantity descriptions will include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

724.200. Surface water information. The name, location, ownership and description of all surface-water bodies such as streams, lakes and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions will include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Baseline acidity and alkalinity information will be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions will include, at a minimum, baseline information on seasonal flow rates.

724.300. Geologic Information. Each application will include geologic information in sufficient detail, as given under R645-301-624, to assist in:

724.310. Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; and

724.320. Determining whether reclamation as required by the R645 Rules can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

724.400. Climatological Information.

724.410. When requested by the Division, the permit application will contain a statement of the climatological factors that are representative of the proposed permit area, including:

724.411. The average seasonal precipitation;

724.412. The average direction and velocity of prevailing winds; and

724.413. Seasonal temperature ranges.

724.420. The Division may request such additional data as deemed necessary to ensure compliance with the requirements of R645-301 and R645-302.

724.500. Supplemental information. If the determination of the PHC required by R645-301-728 indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under R645-301-724.100 and R645-301-724.200 will be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

724.700. Each permit application that proposes to conduct coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream will meet the requirements of R645-302-320.

725. Baseline Cumulative Impact Area Information.

725.100. Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations on surface- and ground-water systems as required by R645-301-729 will be provided to the Division if available from appropriate federal or state agencies.

725.200. If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.

725.300. The permit will not be approved until the necessary hydrologic and geologic information is available to the Division.

726. Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.

727. Alternative Water Source Information. If the probable hydrologic consequences determination required by R645-301-728 indicates that the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application will contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

728. Probable Hydrologic Consequences (PHC) Determination.

728.100. The permit application will contain a determination of the PHC of the proposed coal mining and reclamation operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

728.200. The PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

728.300. The PHC determination will include findings on:

728.310. Whether adverse impacts may occur to the hydrologic balance;

728.320. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

728.330. What impact the proposed coal mining and reclamation operation will have on:

728.331. Sediment yield from the disturbed area;

728.332. Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

728.333. Flooding or streamflow alteration;

728.334. Ground-water and surface-water availability; and

728.335. Other characteristics as required by the Division; and

728.340. Whether the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY will proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; Or

728.350. Whether the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 1992 may result in contamination, diminution or interruption of State-appropriated Water[~~water~~] in existence within the proposed permit or adjacent areas at the time the application is submitted[; ~~used for legitimate purposes, and which a source within the permit or adjacent areas~~].

728.400. An application for a permit revision will be reviewed by the Division to determine whether a new or updated PHC determination will be required.

729. Cumulative Hydrologic Impact Assessment (CHIA).

729.100. The Division will provide an assessment of the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations upon surface- and ground-water systems in the cumulative impact area. The CHIA will be sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

729.200. An application for a permit revision will be reviewed by the Division to determine whether a new or updated CHIA will be required.

730. Operation Plan.

731. General Requirements. The permit application will include a plan, with maps and descriptions, indicating how the relevant requirements of R645-301-730, R645-301-740, R645-301-750 and R645-301-760 will be met. The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act (33 U.S.C. 1251 et seq.); and to meet applicable federal and Utah water quality laws and regulations. The plan will include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the plan will include measures to be taken to protect or replace water rights and restore approximate premining recharge capacity. The plan will specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under R645-301-728 and will include preventative and remedial measures.

The Division may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Coal mining and reclamation operations that minimize water pollution and changes in flow will be used in preference to water treatment.

731.100. Hydrologic-Balance Protection.

731.110. Ground-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.111. Ground-water quality will be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and

731.112. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES ground-water quantity will

be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

731.120. Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.121. Surface-water quality will be protected by handling earth materials, ground-water discharges and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and, otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800 and R645-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls; and

731.122. Surface-water quantity and flow rates will be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under R645-301-731.

731.200. Water Monitoring.

731.210. Ground-Water Monitoring. Ground-water monitoring will be conducted according to the plan approved under R645-301-731.200 and the following:

731.211. The permit application will include a ground-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in R645-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese and water levels will be monitored;

731.212. Ground-water will be monitored and data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731;

731.213. If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division;

731.214. Ground-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with the procedures of R645-303-220 through R645-

303-228, the Division may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.214 that:

731.214.1. The coal mining and reclamation operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.214.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.211.

731.215. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of ground water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.220. Surface-Water Monitoring. Surface-water monitoring will be conducted according to the plan approved under R645-301-731.220 and the following:

731.221. The permit application will include a surface-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in R645-301-731 as well as the effluent limitations found in R645-301-751;

731.222. The plan will identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance:

731.222.1. At all monitoring locations in streams, lakes and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese and flow will be monitored; and

731.222.2. For point-source discharges, monitoring will be conducted in accordance with 40 CFR Parts 122 and 123, R645-301-751 and as required by the Utah Division of Environmental Health for National Pollutant Discharge Elimination System (NPDES) permits;

731.223. Surface-water monitoring data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements;

731.224. Surface-water monitoring will proceed through mining and continue during reclamation until bond release.

Consistent with R645-303-220 through R645-303-228, the Division may modify the monitoring requirements, except those required by the Utah Division of Environmental Health, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.224 that:

731.224.1. The operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.224.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.221.

731.225. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of surface water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.300. Acid- and Toxic-Forming Materials.

731.310. Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water will be avoided by:

731.311. Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

731.312. Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff and the infiltration of polluted water. Storage will be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

731.320. Storage, burial or treatment practices will be consistent with other material handling and disposal provisions of R645 Rules.

731.400. Transfer of Wells. Before final release of bond, exploratory or monitoring wells will be sealed in a safe and environmentally sound manner in accordance with R645-301-631, R645-301-738, and R645-301-765. With the prior approval of the Division, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer will comply with Utah and local laws and the permittee will remain responsible for the proper management of the well until bond release in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

731.500. Discharges.

731.510. Discharges into an underground mine.

731.511. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will:

731.511.1. Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from coal mining and reclamation operations;

731.511.2. Not result in a violation of applicable water quality standards or effluent limitations;

731.511.3. Be at a known rate and quality which will meet the effluent limitations of R645-301-751 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Division; and

731.511.4. Meet with the approval of MSHA.

731.512. Discharges will be limited to the following:

731.512.1. Water;

731.512.2. Coal processing waste;

731.512.3. Fly ash from a coal fired facility;

731.512.4. Sludge from an acid-mine-drainage treatment facility;

731.512.5. Flue-gas desulfurization sludge;

731.512.6. Inert materials used for stabilizing underground mines; and

731.512.7. Underground mine development wastes.

731.513. Water from the underground workings of an UNDERGROUND COAL MINING AND RECLAMATION ACTIVITY may be diverted into other underground workings according to the requirements of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

731.520. Gravity Discharges from UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

731.521. Surface entries and accesses to underground workings will be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to R645-301-731.522, may be allowed by the Division if it is demonstrated that the untreated or treated discharge complies with the performance standards of R645-301 and R645-302 and any additional NPDES permit requirements.

731.522. Notwithstanding anything to the contrary in R645-301-731.521, the surface entries and accesses of drift mines first used after January 21, 1981 and located in acid-producing or iron-producing coal seams will be located in such a manner as to prevent any gravity discharge from the mine.

731.530. State-appropriated water supply. The permittee will promptly replace any State-appropriated water supply that is contaminated, diminished or interrupted by UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 1992, if the affected water supply was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic and geologic information required in R645-301-700. will be used to determine the impact of mining activities upon the water supply.

731.600. Stream Buffer Zones.

731.610. No land within 100 feet of a perennial stream or an intermittent stream will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R645-301-742.300.

731.620. The area not to be disturbed will be designated as a buffer zone, and the operator will mark it as specified in R645-301-521.260.

731.700. Cross Sections and Maps. Each application will contain for the proposed permit area:

731.710. A map showing the locations of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Division, and those surface waters which will receive discharges from affected areas in the proposed permit area;

731.720. A map showing the locations of each water diversion, collection, conveyance, treatment, storage and discharge facility to be used. The map will be prepared and certified according to R645-301-512;

731.730. A map showing locations and elevations of each station to be used for water monitoring during coal mining and reclamation operations. The map will be prepared and certified according to R645-301-512;

731.740. A map showing the locations of each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The map will be prepared and certified according to R645-301-512;

731.750. Cross sections for each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The cross sections will be prepared and certified according to R645-301-512.200; and

731.760. Other relevant cross sections and maps required by the Division depending on the structures and facilities located in the permit area.

731.800. Water Rights and Replacement. Any person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in R645-301-624.100 through R645-301-624.200, R645-301-625, R645-301-626, R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be used to determine the extent of the impact of mining upon ground water and surface water.

732. Sediment Control Measures.

732.100. Siltation Structures. Siltation structures will be constructed and maintained to comply with R645-301-742.214. Any siltation structure that impounds water will be constructed and maintained to comply with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

732.200. Sedimentation Ponds.

732.210. Sedimentation ponds whether temporary or permanent, will be designed in compliance with the requirements of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment will also be constructed and maintained to comply with the requirements of R645-301-743, R645-301-533.100 through R645-301-533.600,

R645-301-512.240, R645-301-514.310 through R645-301-514.321 and R645-301-515.200.

732.220. Each plan will, at a minimum, comply with the MSHA requirements given under R645-301-513.100 and R645-301-513.200.

732.300. Diversions. All diversions will be constructed and maintained to comply with the requirements of R645-301-742.100 and R645-301-742.300.

732.400. Road Drainage. All roads will be constructed, maintained and reconstructed to comply with R645-301-742.400.

732.410. The permit application will contain a description of measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

732.420. The permit application will contain a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for Division approval under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

733. Impoundments.

733.100. General Plans. Each permit application will contain a general plan and detailed design plans for each proposed water impoundment within the proposed permit area. Each general plan will:

733.110. Be prepared and certified as described under R645-301-512;

733.120. Contain maps and cross sections;

733.130. Contain a narrative that describes the structure;

733.140. Contain the results of a survey as described under R645-301-531;

733.150. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure; and

733.160. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Division. The Division will have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

733.200. Permanent and Temporary Impoundments.

733.210. Permanent and temporary impoundments will be designed to comply with the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.226, R645-301-743.240, and R645-301-743. Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration will comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will be submitted to the Division as part of the permit application package. For impoundments not included in R645-301-533.610 the Division may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to

establish compliance with the minimum static safety factor of 1.3 specified in R645-301-533.110.

733.220. A permanent impoundment of water may be created, if authorized by the Division in the approved permit based upon the following demonstration:

733.221. The size and configuration of such impoundment will be adequate for its intended purposes;

733.222. The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Utah and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable Utah and federal water quality standards;

733.223. The water level will be sufficiently stable and be capable of supporting the intended use;

733.224. Final grading will provide for adequate safety and access for proposed water users;

733.225. The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses; and

733.226. The impoundment will be suitable for the approved postmining land use.

733.230. The Division may authorize the construction of temporary impoundments as part of coal mining and reclamation operations.

733.240. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division according to R645-301-515.200.

734. Discharge Structures. Discharge structures will be constructed and maintained to comply with R645-301-744.

735. Disposal of Excess Spoil. Areas designated for the disposal of excess spoil and excess spoil structures will be constructed and maintained to comply with R645-301-745.

736. Coal Mine Waste. Areas designated for the disposal of coal mine waste and coal mine waste structures will be constructed and maintained to comply with R645-301-746.

737. Noncoal Mine Waste. Noncoal mine waste will be stored and final disposal of noncoal mine waste will comply with R645-301-747.

738. Temporary Casing and Sealing of Wells. Each well which has been identified in the approved permit application to be used to monitor ground water conditions will comply with R645-301-748 and be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES protected during use by barricades, or fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the operator conducting SURFACE COAL MINING AND RECLAMATION ACTIVITIES.

740. Design Criteria and Plans.

741. General Requirements. Each permit application will include site-specific plans that incorporate minimum design criteria as set forth in R645-301-740 for the control of drainage from disturbed and undisturbed areas.

742. Sediment Control Measures.

742.100. General Requirements.

742.110. Appropriate sediment control measures will be designed, constructed and maintained using the best technology currently available to:

742.111. Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area;

742.112. Meet the effluent limitations under R645-301-751; and

742.113. Minimize erosion to the extent possible.

742.120. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to:

742.121. Retaining sediment within disturbed areas;

742.122. Diverting runoff away from disturbed areas;

742.123. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

742.124. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocities, reduce runoff volumes or trap sediment;

742.125. Treating with chemicals; and

742.126. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, treating mine drainage in underground sumps.

742.200. Siltation Structures. Siltation structures shall be designed in compliance with the requirements of R645-301-742.

742.210. General Requirements.

742.211. Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area will be prevented to the extent possible using the best technology currently available.

742.212. Siltation structures for an area will be constructed before beginning any coal mining and reclamation operations in that area and, upon construction, will be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

742.213. Any siltation structures which impounds water will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

742.214. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of R645-301-751 will be passed through a siltation structure before leaving the permit area.

742.220. Sedimentation Ponds.

742.221. Sedimentation ponds, when used, will:

742.221.1. Be used individually or in series;

742.221.2. Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Division; and

742.221.3. Be designed, constructed, and maintained to:

742.221.31. Provide adequate sediment storage volume;
742.221.32. Provide adequate detention time to allow the effluent from the ponds to meet Utah and federal effluent limitations;

742.221.33. Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Division based on terrain, climate, or other site-specific conditions and on a demonstration by the operator that the effluent limitations of R645-301-751 will be met;

742.221.34. Provide a nonclogging dewatering device adequate to maintain the detention time required under R645-301-742.221.32.

742.221.35. Minimize, to the extent possible, short circuiting;

742.221.36. Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

742.221.37. Ensure against excessive settlement;

742.221.38. Be free of sod, large roots, frozen soil, and acid- or toxic forming coal-processing waste; and

742.221.39. Be compacted properly.

742.222. Sedimentation ponds meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will comply with all the requirements of that section, and will have a single spillway or principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event or greater event as demonstrated to be necessary by the Division.

742.223. Sedimentation ponds not meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event or greater event as demonstrated to be needed by the Division. Such ponds may use a single open channel spillway if the spillway is:

742.223.1. Of nonerodible construction and designed to carry sustained flows; or

742.223.2. Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

742.224. In lieu of meeting the requirements of R645-301-742.223.1 and 742.223.2 the Division may approve a temporary impoundment as a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer in accordance with R645-301-512.200 that the sedimentation pond will safely control the design precipitation event. The water will be removed from the pond in accordance with current, prudent, engineering practices and any sediment pond so used will not be located where failure would be expected to cause loss of life or serious property damage.

742.225. An exception to the sediment pond location guidance in R645-301-742.224 may be allowed where:

742.225.1. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216(a) shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the Division.

742.225.2. Impoundments not included in R645-301-742.225.1 shall be designed to control the precipitation of the 100-year 6-hour event, or greater event if specified by the Division.

742.230. Other Treatment Facilities.

742.231. Other treatment facilities will be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Division based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of R645-301-751 will be met.

742.232. Other treatment facilities will be designed in accordance with the applicable requirements of R645-301-742.220.

742.240. Exemptions. Exemptions to the requirements of R645-301-742.200 and R645-301-763 may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed areas to meet the effluent limitations under R645-301-751 or the applicable Utah and federal water quality standards for the receiving waters.

742.300. Diversions.

742.310. General Requirements.

742.311. With the approval of the Division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions will be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions will not be used to divert water into underground mines without approval of the Division in accordance with R645-301-731.510.

742.312. The diversion and its appurtenant structures will be designed, located, constructed, maintained and used to:

742.312.1. Be stable;

742.312.2. Provide protection against flooding and resultant damage to life and property;

742.312.3. Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

742.312.4. Comply with all applicable local, Utah, and federal laws and regulations.

742.313. Temporary diversions will be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process will be restored in accordance with R645-301 and R645-302. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion will be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement will not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion will be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

742.314. The Division may specify additional design criteria for diversions to meet the requirements of R645-301-742.300.

742.320. Diversion of Perennial and Intermittent Streams.

742.321. Diversion of perennial and intermittent streams within the permit area may be approved by the Division after

making the finding relating to stream buffer zones under R645-301-731.600.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams will be certified by a qualified registered professional engineer as meeting the performance standards of R645-301 and R645-302 and any design criteria set by the Division.

742.330. Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R645-301-742.310.

742.333. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

742.400. Road Drainage.

742.410. All Roads.

742.411. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads will incorporate appropriate limits for surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.

742.412. No part of any road will be located in the channel of an intermittent or perennial stream unless specifically approved by the Division in accordance with applicable parts of R645-301-731 through R645-301-742.300.

742.413. Roads will be located to minimize downstream sedimentation and flooding.

742.420. Primary Roads.

742.421. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

742.422. Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction.

742.423. Drainage Control.

742.423.1. Each primary road will be designed, constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system will be

designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or an alternative event of greater size as demonstrated to be needed by the Division.

742.423.2. Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

742.423.3. Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins will be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

742.423.4. Natural stream channels will not be altered or relocated without the prior approval of the Division in accordance with R645-301-731.100 through R645-301-731.522, R645-301-731.600, R645-301-731.800, R645-301-742.300, and R645-301-751.

742.423.5. Except as provided in R645-301-742.422, drainage structures will be used for stream channel crossings, made using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practice.

743. Impoundments.

743.100. General Requirements. The requirements of R645-301-743 apply to both temporary and permanent impoundments. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," shall comply with the, "Minimum Emergency Spillway Hydrologic Criteria," table in TR-60 and the requirements of this section. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509-AS. Copies may be inspected at the Division of Oil Gas and Mining Offices, 1594 West North Temple, Salt Lake City, Utah 84114 or at the Division of Administrative Rules, Archives Building, Capitol Hill Complex, Salt Lake City, Utah 84114-1021.

743.110. Impoundments meeting the criteria of the MSHA, 30 CFR 77.216(a) will comply with the requirements of 77.216 and R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

743.120. The design of impoundments will be prepared and certified as described under R645-301-512. Impoundments will have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

743.130. Impoundments will include either a combination of principal and emergency spillways or a single spillway as specified in 743.131 which will be designed and constructed to safely pass the design precipitation event or greater event specified in R645-301-743.200 or R645-301-743.300.

743.131. The Division may approve a single-open channel spillway that is:

743.131.1. Of nonerodible construction and designed to carry sustained flows; or

743.131.2. Earth-or grass lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

743.131.3 Except as specified in R645-301-742.224 the required design precipitation event for an impoundment meeting the spillway requirements of R645-301-743.130 is:

743.131.4 For an impoundment meeting the NRCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the Division.

743.131.5 For an impoundment meeting or exceeding the size or other criteria of 30 CFR Sec. 77.216(a), a 100-year 6-hour event, or greater event as specified by the Division.

743.131.6 For an impoundment not included in R645-301-743.131.4 or 743.131.5, a 25-year 6-hour event, or greater event as specified by the Division.

743.132 In lieu of meeting the requirements of 743.131 the Division may approve an impoundment which meets the requirements of the sediment pond criteria of R645-301-742.224 and 742.225.

743.140. Impoundments will be inspected as described under R645-301-514.300.

743.200. The design precipitation event for the spillways for a permanent impoundment meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 100-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

743.300. The design precipitation event for the spillways for an impoundment not meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 25-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

744. Discharge Structures.

744.100. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions will be controlled, by energy dissipators, riprap channels and other devices, where necessary to reduce erosion to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

744.200. Discharge structures will be designed according to standard engineering design procedures.

745. Disposal of Excess Spoil.

745.100. General Requirements.

745.110. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to:

745.111. Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

745.112. Ensure permanent impoundments are not located on the completed fill. Small depressions may be allowed by the Division if they are needed to retain moisture or minimize erosion, create and enhance wildlife habitat or assist revegetation, and if they are not incompatible with the stability of the fill; and

745.113. Adequately cover or treat excess spoil that is acid- and toxic-forming with nonacid nontoxic material to control the impact on surface and ground water in accordance with R645-301-731.300 and to minimize adverse effects on plant growth and the approved postmining land use.

745.120. Drainage control. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design will include diversions and underdrains as necessary

to control erosion, prevent water infiltration into the fill and ensure stability.

745.121. Diversions will comply with the requirements of R645-301-742.300.

745.122. Underdrains will consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Division. The underdrain system will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and will be protected from piping and contamination by an adequate filter. Rock underdrains will be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone or other durable rock) that does not slake in water or degrade to soil materials and which is free of coal, clay or other nondurable material. Perforated pipe underdrains will be corrosion resistant and will have characteristics consistent with the long-term life of the fill.

745.200. Valley Fills and Head-of-Hollow Fills.

745.210. Valley fills and head-of-hollow fills will meet the applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 and the requirements of R645-301-745.200 and R645-301-535.200.

745.220. Drainage Control.

745.221. The top surface of the completed fill will be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

745.222. Runoff from areas above the fill and runoff from the surface of the fill will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.300. Durable Rock Fills. The Division may approve disposal of excess durable rock spoil provided the following conditions are satisfied:

745.310. Except as provided in R645-301-745.300, the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 are met;

745.320. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met; and

745.330. Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.400. Preexisting Benches. The Division may approve the disposal of excess spoil through placement on preexisting benches, provided that the requirements of R645-301-211, R645-301-212,

R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.300 through R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 and the requirements of R645-301-535.400 are met.

746. Coal Mine Waste.

746.100. General Requirements.

746.110. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division.

746.120. Coal mine waste will be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.

746.200. Refuse Piles.

746.210. Refuse piles will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100 and the additional requirements of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200 and the requirements of the MSHA, 30 CFR 77.214 and 77.215.

746.211. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

746.212. Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

746.213. Underdrains will comply with the requirements of R645-301-745.122.

746.220. Surface Area Stabilization.

746.221. Slope protection will be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, will be revegetated upon completion of construction.

746.222. No permanent impoundments will be allowed on the completed refuse pile. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

746.300. Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

746.310. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The potential impact of

acid mine seepage through the impounding structure will be discussed in detail.

746.311. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-513.200, R645-301-514.310 through R645-301-514.330, R645-301-515.200, R645-301-533.100 through R645-301-533.500, R645-301-733.230, R645-301-733.240, R645-301-743.100, and R645-301-743.300. Such structures may not be retained permanently as part of the approved postmining land use.

746.312. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) will have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event, or greater event as demonstrated to be needed by the Division.

746.320. Spillways and outlet works will be designed to provide adequate protection against erosion and corrosion. Inlets will be protected against blockage.

746.330. Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

746.340. Impounding structures constructed of or impounding coal mine waste will be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following that event.

746.400. Return of Coal Processing Waste to Abandoned Underground Workings. Each permit application to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, if appropriate, include a plan of proposed methods for returning coal processing waste to abandoned underground workings as follows:

746.410. The plan will describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime;

746.420. The plan will describe each permanent monitoring well to be located in the backfilled areas, the stratum underlying the mined coal and gradient from the backfilled area; and

746.430. The requirements of R645-301-513.300, R645-301-528.321, R645-301-536.700, R645-301-746.410 and R645-746.420 will also apply to pneumatic backfilling operations, except where the operations are exempted by the Division from requirements specifying hydrologic monitoring.

747. Disposal of Noncoal Mine Waste.

747.100. Noncoal mine waste, including but not limited to grease, lubricants, paints, flammable liquids, garbage, machinery, lumber and other combustible materials generated during coal mining and reclamation operations will be placed and stored in a controlled manner in a designated portion of the permit area or state-approved solid waste disposal area.

747.200. Placement and storage of noncoal mine waste within the permit area will ensure that leachate and surface runoff do not degrade surface or ground water.

747.300. Final disposal of noncoal mine waste within the permit area will ensure that leachate and drainage does not degrade surface or underground water.

748. Casing and Sealing of Wells. Each water well will be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface water, to minimize disturbance to the hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If a water well is exposed by coal mining and reclamation operations, it will be permanently closed unless otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must comply with the provision of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

750. Performance Standards.

All coal mining and reclamation operations will be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area and support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, operations will be conducted to assure the protection or replacement of water rights in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302.

751. Water Quality Standards and Effluent Limitations. Discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

752. Sediment Control Measures. Sediment control measures must be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-760.

752.100. Siltation structures and diversions will be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-763.

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained and reclaimed according to R645-301-732.400, R645-301-742.400 and R645-301-762 and to achieve the following:

752.210. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

752.230. Neither cause nor contribute to, directly or indirectly, the violation of effluent standards given under R645-301-751;

752.240. Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems; and

752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

753. Impoundments and Discharge Structures. Impoundments and discharge structures will be located, maintained, constructed and reclaimed to comply with R645-301-733, R645-301-734, R645-301-743, R645-301-745 and R645-301-760.

754. Disposal of Excess Spoil, Coal Mine Waste and Noncoal Mine Waste. Disposal areas for excess spoil, coal mine waste and noncoal mine waste will be located, maintained, constructed and reclaimed to comply with R645-301-735, R645-301-736, R645-301-745, R645-301-746, R645-301-747 and R645-301-760.

755. Casing and Sealing of Wells. All wells will be managed to comply with R645-301-748 and R645-301-765. Water monitoring wells will be managed on a temporary basis according to R645-301-738.

760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R645-301 and R645-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of R645-301 and R645-302 and to conform to the approved reclamation plan.

762. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for coal mining and reclamation operations, including:

762.100. Restoring the natural drainage patterns;

762.200. Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain.

763. Siltation Structures.

763.100. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

763.200. When the siltation structure is removed, the land on which the siltation structure was located will be regraded and revegetated in accordance with the reclamation plan and R645-301-358, R645-301-356, and R645-301-357. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.

764. Structure Removal. The application will include the timetable and plans to remove each structure, if appropriate.

765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R645-301-529.400, R645-301-631.100, and R645-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

KEY: reclamation, coal mines**2001****40-10-1 et seq.****Notice of Continuation June 6, 1997**

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**Public Service Commission,
Administration
R746-352
(Second)
Price Cap Regulation**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 23232
FILED: 03/14/2001, 13:41
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 4-8b-2.4 requires the Commission to establish a price cap regulatory regime by which the prices for tariffed public telecommunications services will be set after a telephone corporation's last general rate case.

SUMMARY OF THE RULE OR CHANGE: The new rule was created to set up a price cap regulatory approach in order to set future prices for tariffed public telecommunications services offered by telecommunications corporations subject to the pricing regime of Section 54-8b-2.4. The rule establishes the methodology for calculating the indices that will be applicable to these tariffed services and describes the filings, procedural process and reporting requirements by which these indices will be set on an annual basis. The changes to the proposed rule include: a change to Subsection R746-352-6(B)(1) to change the base year for which the Price Cap Index and Actual Price Index will be valued at 100; wording changes to Subsection R746-352-6(D) to clarify the adjustment when a basket contains services priced below the price floor established in Subsection 54-8b-3.3(3); Subsection R746-352-6(E) has been added to Section R746-352-6 to clarify permissible variances in service pricing controlled by an actual price index; and changes have been made throughout the rule to improve and clarify language.

(DAR Note: This is the second change in proposed rule (CPR) for R746-352. The original new rule upon which the first CPR was based was published in November 1, 2000, issue of the *Utah State Bulletin*, on page 26. The first CPR upon which this second CPR is based was published in the March 1, 2001, issue of the *Utah State Bulletin*, on page 32. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the first CPR, the second CPR, and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-2.4

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The state agency activities required by the proposed rule are a result of legislative changes in Utah's regulation of telecommunications companies from the 1995 Telecommunications Reform Act. Prior agency activities under the prior regulatory approach will be replaced with the activities under the new regulatory regime. It is anticipated that there will be no additional costs or resulting savings to state agencies because of the change in regulatory regime.

❖ **LOCAL GOVERNMENTS:** None--Local government activities are not affected by the proposed rule.

❖ **OTHER PERSONS:** Telecommunications corporations subject to the rule, like the state regulatory agencies, will be replacing activities under the prior regulatory regime with similar activities required by the new regulatory regime. It is anticipated that there will be no net change in the costs or the creation of any savings as a result of the rule. Such changes occurred in 1997 when traditional rate-of-return regulation ended for such corporations operating in the State of Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Commission is unable to quantify the costs for telecommunications corporations subject to the rule. The rule itself does not cause compliance costs, the 1995 statutory changes setting forth the regulatory approach to be applied is the cause of any compliance costs. The Commission estimates that the costs of complying with the new regulatory approach would not exceed the costs incurred in the prior regulatory approach. It is likely that the costs of the new approach, over time, will be less than the costs incurred under traditional rate-of-return regulation. However, neither the Commission nor the affected telecommunications corporation(s) subject to the rule have experience with the costs that would be incurred under Utah's new form of regulating the prices for tariffed public telecommunications services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission has attempted to promulgate a price cap rule that would be simple to formulate and apply in the future. It has incorporated factors required by statute in a manner which the Commission believes will reduce future disputes and litigation concerning measurement of the statutorily required index inputs. Because Utah has no experience with this type of regulatory approach for utility services, estimation of costs to be incurred have been difficult to formulate. The Commission does not anticipate that the costs would be greater than the costs incurred under the past rate-of-return regulation of prices for tariffed services.

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

Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Stroud or Sandy Mooy at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or by Internet E-mail at bstroud@psc.state.ut.us or smoooy@psc.state.ut.us.

THIS RULE MAY BECOME EFFECTIVE ON: 05/02/2001

AUTHORIZED BY: Barbara Stroud (designee), Paralegal

R746. Public Service Commission, Administration.**R746-352. Price Cap Regulation.****R746-352-1. Purpose.**

This rule establishes a framework and procedures for price regulation under Subsection 54-8b-2.4(5)(a).

R746-352-2. Objectives of Price Cap Regulation.

A. Maximum Average Prices -- To alter maximum average prices for tariffed services based upon inflation, industry cost trends, and exogenous factors.

B. Price Protection -- Provide price protection to customers who lack competitive choices.

C. Movement of Prices -- Foster the movement of prices toward cost and the removal of subsidies in the existing price structure of telephone corporations so as to encourage competition for all telecommunications services.

D. Regulatory Burdens -- Minimize regulatory burdens by establishing a relatively simple, administratively efficient, and understandable regulatory system.

R746-352-3. Price Cap Adjustment Formula.

A. For Telephone Corporations Subject to Section 54-8b-2.4 -- For telephone corporations subject to Section 54-8b-2.4, the following price cap adjustment formula shall be used to obtain a Price Cap Index: the Price Cap Index for the current year, or $PCI_{(t)}$, shall equal the product of the following two values: the Price Cap Index of the previous year, or $PCI_{(t-1)}$, multiplied by one plus the sum of a measure of inflation, I, minus a productivity factor, X, plus or minus an exogenous factor, Z, minus a service quality adjustment factor, Q. $PCI_{(t)} = PCI_{(t-1)}$ multiplied by $(1 + (I - X + /- Z - Q))$.

1. The Price Cap Index for the current year, $PCI_{(t)}$, shall be used as the 54-8b-2.4 price cap index, calculated annually, above which the weighted index of the average prices for the telephone corporation's services in a given price cap basket may not rise.

2. The inflation measure, I, equals a measure of economy-wide inflation rates the determination of which is described in R746-352-4(A).

3. The productivity factor, X, equals a productivity factor, or "X-factor," designed to capture the effects of changes in productivity and input prices for the telecommunications industry versus the respective changes in those elements for the economy as a whole, the determination of which is described in R746-352-4(B).

4. The exogenous factor, Z, equals potential adjustments to reflect or offset certain external or exogenous factors (positive and negative), the determination of which is described in R746-352-4(C).

5. The service quality factor, Q, equals potential adjustments to reflect the telephone corporation's service quality performance in

accordance with standards set forth in R746-352-4(D), the determination of which is described in R746-352-4(D).

6. In determining the Price Cap Index, the values for I, X, Z, and Q shall be expressed in decimal, rather than direct percentage, form.

R746-352-4. Price Cap Adjustment Formula Components.

A. Inflation Measure, I -- The Inflation Measure, I, to be used for the price cap adjustment in a given year is the annual percentage change in the Chain-weighted GDP-PI as published by the United States Department of Commerce Bureau of Economic Analysis for the 12 month period ending September 30 of the previous calendar year.

B. Productivity Factor, X -- The Productivity Factor, X, shall measure the amount by which the change in local exchange carrier, or LEC, productivity differs from the change in productivity for the United States economy as a whole plus the amount by which the change in input prices for the United States economy as a whole differs from the change in LEC input prices.

1. The following formula shall be used to calculate the productivity factor: The value for X shall equal the sum of two values. The first value shall equal the difference between a minuend representing the percent change in historical total factor productivity of local exchange carriers less a subtrahend representing the percent change in historical total factor productivity of the entire United States economy. The second value shall equal the difference between a minuend representing the percent change in the historical input prices of goods and services used to produce output of the entire United States economy less a subtrahend representing the percent change in the historical input prices of goods and services used to produce output of local exchange carriers.

$X = (\% \text{Change TFP}_{\text{LEC}} - \% \text{Change TFP}_{\text{US}}) + (\% \text{Change IP}_{\text{US}} - \% \text{Change IP}_{\text{LEC}})$, where

TFP_{LEC} equals the historical total factor productivity of local exchange carriers.

TFP_{US} equals the historical total factor productivity of the entire United States economy.

IP_{LEC} equals the historical input prices of goods and services used to produce output of local exchange carriers.

IP_{US} equals the historical input prices of goods and services used to produce output of the entire United States economy.

2. The productivity factor to be used in calculating the maximum prices for tariffed public telecommunication services pursuant to Subsection 54-8b-2.4(5) shall be 6.2 percent for at least the first year in which the index is in effect. At the end of the first year, a change in the factor percentage shall be considered by the Commission upon a request for change in the productivity factor, X.

a. Notwithstanding the provisions of Paragraph B.1., parties may present and the Commission may, at its discretion, rely on other methods of determining X. Any party presenting an alternative method shall have the burden to demonstrate that the alternative method is a substantially equivalent measure of X. The alternative method of determining X shall be submitted to and approved by the Commission by December 31 of the prior year for it to be used in any year's April 15 Price Cap Compliance Filing, submitted by a telephone company pursuant to R746-352-7.

C. Exogenous Factor, Z -- The exogenous factor, Z, shall represent events whose cost or revenue consequences are of a

material nature which would not otherwise be captured in the inflation measure, I, or the productivity factor, X. One factor which the Commission may consider in evaluating whether to treat an event as exogenous is how comparable firms whose prices are not subject to regulatory control would or would not change their prices to reflect the event.

1. Exogenous events may include:

a. Any removal of subsidies in the existing price structure of the telephone corporation required by federal or state law or approved by the Commission;

b. The impact of alteration in asset lives to better reflect changes in the economic lives of plant and equipment approved by the Commission consistent with Section 54-7-12.1;

c. Commission approved or adopted changes based upon changes in rules of the Federal Communications Commission, including rules with regard to the separation of interstate and intrastate revenues, expenses, or investments;

d. Changes in tax rates applied to the telephone corporation;

e. Any other change external to the business operations of the telephone corporation resulting from: (a) accounting rules adopted by the Financial Accounting Standards Board and approved by the Commission; or (b) laws or rules enacted or adopted by a governmental entity having jurisdiction; and

f. Any other extraordinary events not reasonably foreseeable as of April 30, 1997.

2. The Z factor shall be calculated as the financial impact of the event(s) on intrastate tariffed services divided by intrastate revenues from tariffed services. The financial impact shall be net of any effects on costs or revenues that are incorporated in the inflation measure, I, or productivity factor, X.

3. In the interest of rate rebalancing so as to move prices towards cost and eliminate subsidies, the Commission may direct that the incremental value(s) of Z for one or more baskets may be positive while the offsetting incremental value(s) of Z for the other baskets may be negative.

D. Service Quality Factor, Q -- The service quality factor, Q shall set a value to reflect the telephone corporation's service quality.

1. A service quality measure shall be established using two installation wire center standards, three repair wire center standards, and one statewide held order standard. Performance against the standards shall be measured monthly.

2. The six standards are as follows:

a. Meet at least 90 percent of installation appointments, excluding customer trouble reports within seven days of initial installation, on a wire center basis.

b. Install at least 90 percent of ~~at~~ any new, transfer, and change orders within three business days or on the customer-requested due dates, whichever is later, on a wire center basis. After December 31, 2000, install 95 percent within three business days or on the customer-requested due dates, whichever is later, on a wire center basis.

c. Allow no more than five held orders per 1000 new, transfer, and change orders on a statewide basis. After December 31, 2001, allow no more than four held orders per 1000 new, transfer, and change orders on a statewide basis.

d. Repair at least 80 percent of all out-of-service troubles within one business day on a wire center basis. After December 31,

2000, repair 85 percent of all out of service troubles within one business day on a wire center basis.

e. Repair at least 90 percent of all troubles within two business days on a wire center basis.

f. Meet at least 90 percent of repair commitments on a wire center basis.

3. The service quality factor, Q, for the current year shall be calculated as follows:

a. The service quality measure for a year shall be determined by summing the service failure values occurring during the year. Missing a standard for any four consecutive months constitutes a service failure.

b. Each service failure of a wire center standard shall be given a value of 0.0002 for each wire center in which a service failure occurs.

c. Each service failure of the statewide held order standard shall be given a value of .002.

4. Limitations on service quality factor adjustments.

a. Inadequate service quality results during the first year that a service quality factor adjustment is made may produce a Q-factor value of no more than an initial, threshold value of 0.05. However, upon request of an interested person, the Commission may determine that service quality failures warrant an additional service quality adjustment, up to the full service quality adjustment dictated by the service failures occurring during the year.

b. If the number of service failures during any year causes the initial Q-factor threshold in that year to be achieved, then the Commission shall have the discretion to increase the initial threshold value for the subsequent year by the value of 0.05 or multiple thereof. The Commission may, after improved service quality and subsequent to a petition and order thereon, reduce the Q-factor initial threshold value to be used thereafter by the affected telephone company by a value of 0.05 or multiple thereof.

c. The service quality factor, Q, shall begin being applied in the year 2002 price cap adjustment, based on 2001 service quality data.

5. Exemptions to Service Quality Standards.

a. Exemptions to service quality standards shall be granted for events that the telephone corporation substantiates were beyond its control. It shall be the telephone corporation's responsibility to separately document the cause, the duration and the magnitude of those occurrences.

b. Exemptions are defined as events wherein the telecommunications corporation proves it was unable to meet service standards because of:

(1) A customer's act;

(2) A customer's failure to act;

(3) A government agency's delay in granting a right of way or other required permit;

(4) A disaster or an act of nature that would not normally have been anticipated and prepared for by the telecommunications corporation;

(5) In the case of a work stoppage, the telephone corporation shall have a grace period of six weeks following return to work to comply with service quality standards;

(6) Any disaster or event of sufficient intensity to give rise to an emergency being declared by state government;

(7) A cable cut outside the telephone corporation's control affecting more than 20 pairs; and

(8) A public calling event, busy calling or dial tone loss due to mass calling or dial-up event.

c. A telephone corporation may petition the Commission for longer installation and repair interval standards in wire centers serving remote geographic areas with relatively few customers.

R746-352-5. Service Baskets.

A. Service Baskets -- The telephone corporation's tariffed services having similar characteristics shall be grouped in the following four baskets. These baskets are designed to allow development of different price indices for different groups of services, to limit ~~an incumbent~~ a telephone corporation's ability to shift cost recovery from one major customer or service class to another, and to afford the company a reasonable amount of flexibility to adjust its prices to respond to changing market conditions. As used in this rule, "service" may include service or individual rate elements. They are:

1. Basket 1: Tariffed Residential Basic Exchange Services, Residential Extended Area Service (EAS), Caller ID Blocking, and per Call Blocking. Residential Basic Exchange Services consist of local access services and local usage services.
2. Basket 2: Tariffed business exchange services, consisting of business exchange access lines, flat and measured local usage, PBX trunks, hunting, Direct Inward Dialing (DID), and EAS associated with the foregoing business services.
3. Basket 3: Tariffed intrastate switched access services.
4. Basket 4: All tariffed services that have not otherwise been placed into Baskets 1, 2, or 3.

R746-352-6. Indexing, Pricing Rules and Permitted Rate Adjustments.

A. Index-Based Price Cap Adjustment -- A Price Cap Index, PCI, and an Actual Price Index, API, shall apply separately to each of the four Baskets, unless otherwise ordered by the Commission.

B. Base Year for Calculating Beginning of Price Regulation -- The base year is the year from which indexing begins, such as the year at which both the Price Cap Index and the Actual Price Index are initialized at a value of 100.

1. The base year for which the Price Cap Index and Actual Price Index will be valued at 100 is 199[8]9. ~~["The first year's application of the index-based price cap adjustments shall properly reflect the cumulative values for I, the inflation measure, and X, the productivity factor resulting from the rule's selected base year.]~~

C. Re-initializing the Price Index to Eliminate the Prior Year's Service Quality Adjustment[-] -- Before calculating the price index for a new year, the previous year's PCI shall be elevated by the amount that it had been depressed, if at all, by that year's service quality adjustment.

D. Adjustment When a Basket Contains Services Priced Below the Price Floor Established in ~~[-Section]~~ 54-8b-3.3(3)[-] -- ~~["Where a price change for a service cannot be made, in whole or in part, because the full application of the calculated PCI to be applied to the service would result in the service's resulting price being below the price floor set in Section 54-8b-3.3(3), the Commission shall determine how the price reduction otherwise applicable to that service, in whole or part, shall be incorporated in the price changes for other services of the same Basket, services of other Baskets or otherwise accounted for to reflect the complete effect of the Index-based Price Cap Adjustments required by the year's Price Cap~~

~~Compliance Filing. The telephone company and interested persons shall include their recommendations on the adjustments they propose in their filings submitted pursuant to R746-352-7.] If the price cap index for a basket, $PCI_{(t)}$, as normally calculated, is less than either the prior year's price cap index, $PCI_{(t-1)}$, or 100, then the $PCI_{(t)}$ shall be recalculated as the product of the following three values: the price cap index of the previous year, or $PCI_{(t-1)}$, multiplied by one plus the sum of the measure of inflation, I, minus the productivity factor, X, plus or minus the exogenous factor, Z, minus the service quality adjustment, Q, $(1+(I-X+/- Z-Q))$, multiplied by an Adjustment Factor, $A_{(t)}$, where the Adjustment Factor equals a fraction expressed with a numerator of the revenues associated with services in the basket priced above cost pursuant to Section 54-8b-2.4(5)(c) and a denominator of the total revenues associated with all services of the basket. $PCI_{(t)} = PCI_{(t-1)} \times (1+(I-X+/- Z-Q)) \times A_{(t)}$~~

E. Permissible Variances in Service Pricing Controlled by an Actual Price Index --

1. ~~Subject to the limitations contained in this rule, the price for a service in a basket may vary from the price that would be dictated by application of the price cap index where additional, off-setting price change variances are made for another service or services in the basket as measured by an Actual Price Index, API, for that basket.~~

2. The Actual Price Index, API, is a means to permit comparison of the telephone corporation's price levels to the PCI, by expressing actual prices in terms of indexed values. An API shall be calculated for each Basket on the basis of the revenue-weighted average change in the telephone corporation's prices for all services included in that Basket between the current year, period t, and the previous year, period (t-1). The API is an index of the telephone corporation's actual prices and thus may reflect additional rate decreases or foregone rate increases voluntarily made by the telephone corporation over time. As actual prices change, the API will be changed to reflect upward and downward price movements.

F. Limitations on Service Basket Indices and Individual Service Prices --

1. The Actual Price Index, API, for each service basket cannot exceed the PCI applicable to the service basket.

2. The prices of individual services within a service basket are subject to the following limitations:

a. Unless otherwise approved by the Commission, the price for any service in any basket may not be increased in any one year by more than the net of the PCI for that year plus ten percent.

b. Apart from increases which occur in conjunction with Commission-approved rate rebalancing where there are offsetting rate reductions, or absent a superceding public interest determination, services for which a price reduction would be contrary to 54-8b-2.4(5)(c) may have their prices elevated cumulatively only to the degree that the price cap indices associated with their respective services' baskets exceed 100.

c. The tariff price of each service must remain above its price floor in accordance with 54-8b-3.3(3).

d. Provided that these pricing limitations are met, the telephone corporation may adjust the prices for services in any basket in conjunction with the Annual Price Cap Compliance Filing, or at any other time. Price changes proposed by the telephone corporation shall be filed with the Commission at least ~~[thirty-(30)]~~ days prior to their proposed effective date and shall

be accompanied with supporting information showing that the proposed price changes are in compliance with this rule and any statutory limitations.

3. Rate Rebalancing.

a. The Commission may, as consistent with the public interest, direct that the telephone corporation rebalance rates, or the telephone corporation may petition for the authority to rebalance rates. That rebalancing, which would be separate from the impacts of any required price-indexed-based rate adjustments, must be revenue-neutral, assuming no sales quantity changes and may be accomplished both within and across service baskets. Once implemented, the telephone corporation may then rely on the Commission approved rebalanced rates as its effective rates for its Annual Price Cap Compliance filing and any subsequent proposed rate changes.

b. In addition to the preceding rate rebalancings, the Commission may direct the telephone corporation to make revenue-neutral adjustments to rates in Basket 3 services, with offsetting adjustments to the PCI's in other baskets as required, to be consistent with interstate policy as set by the Federal Communications Commission, to the extent that the Commission determines [such]that consistency is in the public interest.

4. [Notwithstanding the above, a]All tariff changes will be subject to the approval of the Commission pursuant to 54-3-2 and 54-3-3.

R746-352-7. Price Cap Adjustments, Indices and Other Filings.

A. Index-based Price Cap and Rate Adjustments -- By April 15 of each year, the telephone corporation shall make a Price Cap Compliance Filing with the Commission. The Commission shall approve, suspend, or reject the Price Cap Compliance Filing within 45 days of that filing. Interested persons shall have 30 days from the filing date to file comments based upon a review of the telephone corporation's filing to determine whether the corporation's proposed updated price cap indices, measures, supporting evidence and any proposed rate changes are consistent with this rule. Any rate changes proposed with the Price Cap Compliance Filing shall be reviewed and will become effective on July 1, unless the Commission approves an achievable, different effective date. The Price Cap Compliance Filing will include at a minimum:

1. Data showing the Chain-weighted GDP-PI for the preceding [twelve]12 months ended September 30 and the Chain-weighted GDP-PI percentage change for that [twelve]12-month period;

2. Calculations of the PCI updated as required for any new X-factor and any inflation I-measure adjustments to reflect the percentage change in the Chain-weighted GDP-PI, any exogenous Z-factor adjustments that have been expressly approved by the Commission by December 31 of the preceding year pursuant to paragraph B below, and any service quality Q-factor adjustments, together with updated API calculations;

a. For each basket, the incumbent telephone corporation must show a complete price-out using the end-of-year quantities or sales levels of services in the basket. The price-out will sum the quantities multiplied by existing prices and proposed prices for each tariffed service, to obtain the total existing revenues and proposed revenues for tariffed services.

- 3. Tariff pages to reflect any proposed changes in tariff rates;
- 4. Schedules showing the changes in the tariffed rates;

B. Filings to Support Proposed Exogenous Adjustments -- The telephone corporation and any interested person may file any proposed Z-factor treatment of an exogenous event within 90 days of the date on which the effects of that event are known and measurable. The Commission shall review [such]those filings and issue a written decision accepting or rejecting the proposed Z-factor adjustment and associated value for use in conjunction with this rule within 60 days of the filing. The telephone corporation may request assigning the financial impact of the exogenous adjustment to specific baskets.

1. As a part of its filing, the moving party or parties will submit the following:

a. A description of the matter proposed for treatment as an exogenous event and a demonstration that it satisfies the definition of an exogenous event set forth in R746-352-4(C); and

b. Data that describes and quantifies the estimated financial impact to the intrastate tariffed services of the telephone corporation;

C. Exogenous Factors -- Exogenous factors that have been submitted to the Commission and approved by December 31 of each year will be aggregated and included in the price cap filing on [May 1]April 15 of the following year. Exogenous factors shall be exclusive of any adjustments already incorporated in the Chain-weighted GDP-PI or the X factor.

D. Compliance Filing Requirements - Below-Cap Rate Changes -- The telephone corporation may adjust its rates at any time during the year, through a "below-cap" compliance filing. In this type of filing, the telephone corporation must demonstrate that its cumulative proposed rate changes will still satisfy the prevailing basket-specific PCIs for that year, in addition to all other requirements or limitations of this rule. In order to satisfy this requirement, the telephone corporation must submit the following to the Commission:

1. Service Baskets. The telephone corporation must provide a calculation of the actual price cap index, API, for each basket. For each price basket, the telephone corporation must show the price-out described in R746-352-7(A)(2)(a)[above].

2. Demonstration of Compliance with R746-352. The telephone corporation must show that the proposed rate changes will comply with the provisions set forth in R746-352-6 and 7.

3. Tariff Pages to Reflect Revised Rates in Each of the Service Baskets. The telephone corporation must provide copies of the affected tariff pages that will reflect the proposed revised rates in each of the service baskets.

4. Description of Proposed Changes to Rates in Each Rate Filing. Additionally, the telephone corporation must provide a brief narrative description that summarizes its proposed rate changes.

KEY: price indexes, public utilities, telecommunications
2001 **54-8b-2.4**
54-8b-3.3
54-3-2
54-3-3
54-7-12



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) (1996)).

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 (1996); and *Utah Administrative Code* Section R15-4-8.

Labor Commission, Industrial Accidents **R612-2-5** Regulation of Medical Practitioner Fees

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 23548
FILED: 03/08/2001, 09:18
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed emergency rule incorporates the most current edition of the Utah Labor Commission's Medical Fee Guidelines and Codes, which designates specific Current Procedural Terminology (CPT-4) codes as global fee codes and clarifies restorative services billing codes.

SUMMARY OF THE RULE OR CHANGE: The proposed emergency rule incorporates the most current edition of the Utah Labor Commission's Medical Fee Guidelines and Codes. The most current edition designates specific procedures as global fee codes instead of allowing separate billing for each service associated with the procedure. It also clarifies billing codes for specific restorative services.

(DAR Note: A corresponding proposed amendment is under DAR No. 23549 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-2-407

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah Labor Commission's Medical Fee Guidelines and Codes, March 8, 2001, edition

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: A savings of \$200,000 to \$300,000 in workers' compensation costs.

❖LOCAL GOVERNMENTS: A savings of \$300,000 to \$400,000 in workers' compensation costs.

❖OTHER PERSONS: A savings of approximately \$1,000,000 in workers' compensation costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be no compliance costs for affected persons. The proposed rule incorporates the most current edition of the Utah Labor Commission's Medical Fee Guidelines and Codes, which establishes global procedure codes, and will result in a reduction of compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: By correcting erroneous medical fee provisions that were included in the January 2001 version of the Utah Labor Commission's Medical Fee Guidelines and Codes, this amendment will result in savings of \$1,500,000 to employers and their insurance carriers. The amendment will not reduce fees for medical providers from the levels customarily paid under current practice, as established by the pre-January 2001 version of the Utah Labor Commission's Medical Fee Guidelines and Codes.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.

The State's workers' compensation costs, as well as all local governments and all businesses would rise significantly.

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

Labor Commission
Industrial Accidents
Third Floor, Heber M. Wells Building
160 East 300 South
PO Box 146610
Salt Lake City, UT 84114-6610, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Joyce Sewell at the above address, by phone at (801) 530-6988, by FAX at (801) 530-6804, or by Internet E-mail at icman.jsewell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 03/08/2001

AUTHORIZED BY: R. Lee Ellertson, Commissioner

**R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-5. Regulation of Medical Practitioner Fees.**

Pursuant to Section 34A-2-407:
A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the treatment of an industrially injured employee.

2. Adopts and by this reference incorporates the non facility total unit value of the National Health Care Financing Administration's (HCFA) "Resource-Based Relative Value Scale" (RBRVS), 2001 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 2001 edition, coding guidelines. The CPT-4 coding guidelines are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for an industrial injury or occupational disease, effective January 1, 2001:

- Anesthesiology \$37.00 (1 unit per 15 minutes of anesthesia);
- Medicine \$40.00;
- Pathology and Laboratory 150% of Utah's published Medicare carrier;
- Radiology \$53.00;
- Restorative Medicine \$40.00, with Utah code 97001 at a 0.8 relative value unit and Utah code 97002 at a 0.5 of relative value unit.
- Surgery \$37.00;
- All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines \$58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of ~~January~~ March 8, 2001. The Utah Medical Fee Guidelines and Codes can

be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their industrial injuries or occupational diseases.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of industrial injured/ill patients.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

**KEY: workers' compensation, fees, medical practitioner
March 8, 2001 34A-2-101 et seq.
Notice of Continuation June 15, 1998 34A-3-101 et seq.
34A-1-104**



**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 (1996).

Agriculture and Food, Marketing and Conservation

R65-1

Utah Apple Marketing Order

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23543
FILED: 03/06/2001, 15:24
RECEIVED BY: NL

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 4-2-2(1)(e) requires marketing orders be issued for any designated agricultural product.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This order provides for advertising and sales promotion to create and expand the market of Utah apples; research projects and experiments; and uniform grading of apples sold or offered for sale by producers or handlers.

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

Agriculture and Food
Marketing and Conservation
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Randy Parker at the above address, by phone at (801) 538-7108, by FAX at (801) 538-7126, or Internet E-mail at agmain.rparker@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 03/06/2001



Agriculture and Food, Marketing and Conservation

R65-3

Utah Turkey Marketing Order

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23544
FILED: 03/06/2001, 15:24
RECEIVED BY: NL

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 4-2-2(1)(e) requires that marketing orders be issued for any designated agricultural product.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This order is established to assure an effective and coordinated program

to maintain and expand the Utah turkey industry's market position.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 Agriculture and Food
 Marketing and Conservation
 350 North Redwood Road
 PO Box 146500
 Salt Lake City, UT 84114-6500, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Randy Parker at the above address, by phone at (801) 538-7108, by FAX at (801) 538-7126, or Internet E-mail at agmain.rparker@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 03/06/2001



Agriculture and Food, Marketing and Conservation

R65-4

Utah Egg Marketing Order

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23545
 FILED: 03/06/2001, 15:24
 RECEIVED BY: NL

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 4-2-2(1)(e) requires that marketing orders be issued for any designated agricultural product.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This order is established to assure an effective and coordinated program to maintain and expand the Utah egg industry's market position.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 Agriculture and Food
 Marketing and Conservation
 350 North Redwood Road
 PO Box 146500
 Salt Lake City, UT 84114-6500, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Randy Parker at the above address, by phone at (801) 538-7108, by FAX at (801) 538-7126, or Internet E-mail at agmain.rparker@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 03/06/2001



Agriculture and Food, Regulatory Services

R70-101

Bedding, Upholstered Furniture and Quilted Clothing

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23541
 FILED: 03/06/2001, 14:02
 RECEIVED BY: NL

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 4-10-3 authorizes the Utah Department of Agriculture and Food to make and enforce rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to designate the license fees, labeling, terms, definitions, nomenclature and conditions as commonly used and recognized in the manufacture, sale and distribution of bedding, upholstered furniture, quilted clothing products, and filling materials.

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

Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Claudia Gale at the above address, by phone at (801) 538-
7151, by FAX at (801) 538-4949, or Internet E-mail at
agmain.cgale@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 03/06/2001



End of the Five-Year Notices of Review and Statements of Continuation Section

Notices of Rule Effective Dates Begins on the Following Page

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Agriculture and Food

Regulatory Services

No. 23428 (REP): R70-420. Chickens.
Published: February 1, 2001
Effective: March 6, 2001

No. 23429 (REP): R70-430. Turkeys.
Published: February 1, 2001
Effective: March 6, 2001

No. 23433 (AMD): R70-620. Enrichment of Flour and Cereal Products.
Published: February 1, 2001
Effective: March 6, 2001

Commerce

Occupational and Professional Licensing

No. 23260 (CPR): R156-11a. Cosmetologist/Barber Licensing Act Rules.
Published: February 1, 2001
Effective: March 6, 2001

No. 23309 (CPR): R156-28. Veterinary Practice Act Rules.
Published: February 1, 2001
Effective: March 8, 2001

Corrections

Administration

No. 23400 (AMD): R251-301. Employment, Educational or Vocational Training for Community Center Residents.
Published: February 1, 2001
Effective: March 13, 2001

Education

Administration

No. 23426 (AMD): R277-469. Textbook Commission Operating Procedures.
Published: February 1, 2001
Effective: March 6, 2001

Environmental Quality

Air Quality

No. 23139 (CPR): R307-204. Emissions Standards: Smoke Management.
Published: February 1, 2001
Effective: March 6, 2001

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 23420 (AMD): R414-303. Coverage Groups.
Published: February 1, 2001
Effective: March 13, 2001

No. 23421 (AMD): R414-304. Income and Budgeting.
Published: February 1, 2001
Effective: March 13, 2001

No. 23422 (AMD): R414-305. Resources.
Published: February 1, 2001
Effective: March 13, 2001

Natural Resources

Parks and Recreation

No. 23423 (AMD): R651-601. Definitions as Used in These Rules.
Published: February 1, 2001
Effective: March 6, 2001

No. 23424 (AMD): R651-608-2. Events Prohibited without Permit.
Published: February 1, 2001
Effective: March 6, 2001

Forestry, Fire and State Lands

No. 23425 (AMD): R652-121. Wildland Fire Suppression Fund.
Published: February 1, 2001
Effective: March 12, 2001

Professional Practices Advisory Commission

Administration

No. 23427 (AMD): R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.
Published: February 1, 2001
Effective: March 6, 2001

NOTICES OF RULE EFFECTIVE DATES

Public Safety

Driver License

No. 23402 (AMD): R708-3. Driver License Point
System Administration.

Published: February 1, 2001

Effective: March 6, 2001

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, 2001, including notices of effective date received through March 15, 2001, the effective dates of which are no later than April 1, 2001. 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).

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.state.ut.us/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

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CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
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5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	23366	AMD	01/22/2001	2000-24/5
<u>Fleet Operations</u>					
R27-2	Fleet Operations Adjudicative Proceedings	23522	5YR	02/08/2001	2001-5/39
R27-7	Safety and Loss Prevention of State Vehicles	23345	NEW	01/31/2001	2000-24/6
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R28-2	Surplus Firearms	23523	5YR	02/08/2001	2001-5/39
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R58-10	Meat and Poultry Inspection	23306	AMD	01/03/2001	2000-23/9
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R63-1	Fee Schedule	23404	5YR	01/10/2001	2001-3/94

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R65-1	Utah Apple Marketing Order	23543	5YR	03/06/2001	2001-7/45
R65-3	Utah Turkey Marketing Order	23544	5YR	03/06/2001	2001-7/45
R65-4	Utah Egg Marketing Order	23545	5YR	03/06/2001	2001-7/46
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	23434	5YR	01/16/2001	2001-3/94
R68-2	Utah Commercial Feed Act Governing Feed	23435	5YR	01/16/2001	2001-3/95
R68-6	Utah Nursery Act	23436	5YR	01/16/2001	2001-3/95
R68-10	Quarantine Pertaining to the European Corn Borer	23437	5YR	01/16/2001	2001-3/96
R68-12	Quarantine Pertaining to Mint Wilt	23438	5YR	01/16/2001	2001-3/96
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R70-420	Chickens	23428	REP	03/06/2001	2001-3/5
R70-430	Turkeys	23429	REP	03/06/2001	2001-3/6
R70-610	Uniform Retail Wheat Standards of Identity	23430	5YR	01/16/2001	2001-3/96
R70-610	Uniform Retail Wheat Standards and Identity	23431	NSC	02/01/2001	Not Printed
R70-620	Enrichment of Flour and Cereal Products	23432	5YR	01/16/2001	2001-3/97
R70-620	Enrichment of Flour and Cereal Products	23433	AMD	03/06/2001	2001-3/7
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<u>Administration</u>					
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<u>Consumer Protection</u>					
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	23457	5YR	01/29/2001	2001-4/61
<u>Occupational and Professional Licensing</u>					
R156-1-308d	Denial of Renewal of Licensure-Classification of proceedings-Conditional Renewal During Pendency of Adjudicative Proceedings, Audit or Investigation	23295	AMD	01/04/2001	2000-23/9
R156-11a	Cosmetologist/Barber Licensing Act Rules	23260	AMD	see CPR	2000-22/5
R156-11a	Cosmetologist/Barber Licensing Act Rules	23260	CPR	03/06/2001	2001-3/79
R156-26a	Certified Public Accountant Licensing Act Rules	23296	AMD	01/04/2001	2000-23/11
R156-28	Veterinary Practice Act Rules	23309	AMD	see CPR	2000-23/15
R156-28	Veterinary Practice Act Rules	23309	CPR	03/08/2001	2001-3/80
R156-37-502	Unprofessional Conduct	23401	NSC	02/01/2001	Not Printed
R156-47b	Massage Therapy Practice Act Rules	23535	5YR	02/26/2001	2001-6/49

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R156-69	Dentist and Dental Hygienist Practice Act Rules	23141	CPR	02/15/2001	2001-2/17
R156-73	Chiropractic Physician Practice Act Rules	23390	AMD	02/15/2001	2001-2/2
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R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	23321	AMD	01/23/2001	2000-21/3
<u>Community Development, Library</u>					
R223-2	Public Library online Access for Eligibility to receive Public Funds	23352	NEW	02/15/2001	2000-24/11
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R230-1	Native American Grave Protection and Repatriation	23476	5YR	02/01/2001	2001-4/61
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<u>Administration</u>					
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R251-102	Release of Communicable Disease Information	23511	5YR	02/05/2001	2001-5/40
R251-301	Employment, Education or Vocational Training for Community Correctional Center Residents	23512	5YR	02/05/2001	2001-5/40
R251-301	Employment, Educational or Vocational Training for Community Center residents	23400	AMD	03/13/2001	2001-3/8
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<u>Administration</u>					
R277-469	Textbook Commission Operating Procedures	23426	AMD	03/06/2001	2001-3/9
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R307-204	Emissions Standards: Smoke Management	23139	NEW	see CPR	2000-19/14
R307-204	Emissions Standards: Smoke Management	23139	CPR	03/06/2001	2001-3/81

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<u>Radiation Control</u>					
R313-19	Requirements of General Applicability to Licensing of Radioactive Material	23312	AMD	01/26/2001	2000-23/19
<u>Solid and Hazardous Waste</u>					
R315-315-8	Petroleum Contaminated Soils	22858	AMD	see CPR (First)	2000-11/18
R315-315-8	Petroleum Contaminated Soils	22858	CPR (First)	see CPR (Second)	2000-17/67
R315-315-8	Petroleum Contaminated Soils	22858	CPR (Second)	01/05/2001	2000-23/58
<u>Water Quality</u>					
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R317-1-3	Requirements for Waste Discharges	23164	CPR	01/23/2001	2000-24/74
R317-7	Underground Injection Control (UIC) Program	23162	AMD	see CPR	2000-19/34
R317-7	Underground Injection Control (UIC) Program	23162	CPR	01/23/2001	2000-24/75
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	23161	AMD	see CPR	2000-19/40
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	23161	CPR	01/23/2001	2000-24/78
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<u>Epidemiology and Laboratory Services, HIV/AIDS, Tuberculosis Control/Refugee Health</u>					
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R414-63	Medicaid Policy for Pharmacy Reimbursement	23347	NEW	01/17/2001	2000-24/23
R414-303	Coverage Groups	23396	EMR	01/03/2001	2001-3/87
R414-303	Coverage Groups	23420	AMD	03/13/2001	2001-3/52
R414-304	Income and Budgeting	23397	EMR	01/03/2001	2001-3/89
R414-304	Income and Budgeting	23421	AMD	03/13/2001	2001-3/56
R414-305	Resources	23398	EMR	01/03/2001	2001-3/91
R414-305	Resources	23422	AMD	03/13/2001	2001-3/60
R414-309	Utah Medical Assistance Program (UMAP)	23349	AMD	01/17/2001	2000-24/24

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<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-2	Air Medical Services Rules	23344	AMD	01/23/2001	2000-24/32
R426-6	Emergency Medical Services Grants Program Rules	23185	AMD	01/17/2001	2000-20/27
R426-7	Emergency Medical Services Prehospital Data System Rules	23186	NEW	01/30/2001	2000-20/29
R426-8	Emergency Medical Services Per Capita Grants Program Rules	23202	NEW	01/30/2001	2000-21/14
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R432-106	Specialty Hospital-Critical Access	23292	NEW	01/23/2001	2000-23/31
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<u>Administration, Administrative Services, Licensing</u>					
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R501-7	Child Placing Agencies	23121	CPR	01/16/2001	2000-23/59
R501-8	VII. Section C: Categorical Standards	23322	AMD	01/16/2001	2000-23/33
R501-8	Outdoor Youth Programs	23406	NSC	02/01/2001	Not Printed
R501-17	Adult Foster Care Standards	23323	AMD	01/16/2001	2000-23/39
<u>Aging and Adult Services</u>					
R510-1	Authority and Purpose	23453	5YR	01/23/2001	2001-4/62
<u>Recovery Services</u>					
R527-928	Lost Checks	23389	AMD	02/15/2001	2001-2/7
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<u>Administration</u>					
R590-204	Adoption Indemnity Benefits	23378	NEW	02/09/2001	2001-1/23
R590-205	Privacy of Consumer Information Compliance Deadline	23247	NEW	01/11/2001	2000-22/35
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<u>Industrial Accidents</u>					
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R612-4	Premium Rates	23520	5YR	02/08/2001	2001-5/41
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<u>Parks and Recreation</u>					
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R651-223	Vessel Accident Reporting	23456	5YR	01/26/2001	2001-4/63
R651-601	Definitions as Used in These Rules	23423	AMD	03/06/2001	2001-3/62
R651-608-2	Events Prohibited without Permit	23424	AMD	03/06/2001	2001-3/63
<u>Forestry, Fire and State Lands</u>					
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R657-13	Taking Fish and Crayfish	23189	AMD	01/02/2001	2000-21/23
R657-17	Lifetime Hunting and Fishing License	23358	AMD	01/16/2001	2000-24/51
R657-33	Taking Bear	23393	AMD	02/15/2001	2001-2/8
R657-38	Dedicated Hunter Program	23360	AMD	01/16/2001	2000-24/53
R657-39	Regional Advisory Councils	23529	5YR	02/15/2001	2001-5/41
R657-40	Wildlife Rehabilitation	23531	5YR	02/15/2001	2001-5/42
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R708-3	Driver License Point System Administration	23402	AMD	03/06/2001	2001-3/75
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R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	23339	AMD	01/16/2001	2000-24/61
R710-6	Liquefied Petroleum Gas Rules	23367	AMD	01/16/2001	2000-24/63
R710-9	Rules Pursuant to the Utah Fire Prevention Law	23340	AMD	01/16/2001	2000-24/64

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Law Enforcement and Technical Services, Criminal Identification (Changed to Criminal Investigations and Technical Services, Criminal Identification)</u>					
R722-2 (Changed to R722-900)	Review and Challenge of Criminal Record	23444	NSC	02/01/2001	Not Printed
<u>Law Enforcement and Technical Services, Regulatory Licensing (Changed to Criminal Investigations and Technical Services, Criminal Identification)</u>					
R724-4 (Changed to R722-300)	Concealed Firearm Permit Rule	23445	NSC	02/01/2001	Not Printed
R724-6 (Changed to 722-340)	Emergency Vehicles	23446	NSC	02/01/2001	Not Printed
R724-7 (Changed to R722-320)	Undercover Identification	23447	NSC	02/01/2001	Not Printed
R724-9 (Changed to R722-330)	Licensing of Private Investigations	23448	NSC	02/01/2001	Not Printed
R724-10 (Changed to R722-310)	Regulation of Bail Bond Recovery and Enforcement Agents	23449	NSC	02/01/2001	Not Printed
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<u>Administration</u>					
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R746-240	Telecommunication Service Rules	23354	AMD	02/15/2001	2000-24/67
R746-341	Lifeline Rule	23376	AMD	03/01/2001	2001-1/30
R746-360	Universal Public Telecommunications Service Support Fund	23271	AMD	02/15/2001	2000-22/45
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<u>Property Tax</u>					
R884-24P-65	Proportional Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402	23316	AMD	02/20/2001	2000-23/54
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<u>Operations, Maintenance</u>					
R918-3	Snow Removal	23379	AMD	02/15/2001	2001-1/32
<u>Program Development</u>					
R926-6	Transportation Corridor Preservation Revolving Loan Fund	23311	AMD	01/03/2001	2000-23/55
<u>Preconstruction</u>					
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RULES INDEX - BY KEYWORD (SUBJECT)

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<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>AIR POLLUTION</u>					
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Administrative Services, Fleet Operations	23345	R27-7	NEW	01/31/2001	2000-24/6
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Environmental Quality, Drinking Water	23252	R309-150	AMD	01/04/2001	2000-22/33
Natural Resources, Parks and Recreation	23441	R651-101	5YR	01/18/2001	2001-4/62
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<u>AIR QUALITY</u>					
Environmental Quality, Air Quality	23139	R307-204	NEW	see CPR	2000-19/14
	23139	R307-204	CPR	03/06/2001	2001-3/81
<u>APPELLATE PROCEDURES</u>					
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<u>APPRAISAL</u>					
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Administrative Services, Fleet Operations	23345	R27-7	NEW	01/31/2001	2000-24/6
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Administrative Services, Finance	23366	R25-14	AMD	01/22/2001	2000-24/5

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<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>BAIL BOND ENFORCEMENT AGENT</u>					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23449	R724-10 (Changed to R722-310)	NSC	02/01/2001	Not Printed
<u>BAIL BOND RECOVERY AGENT</u>					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23449	R724-10 (Changed to R722-310)	NSC	02/01/2001	Not Printed
<u>BANKS AND BANKING</u>					
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	23260	R156-11a	CPR	03/06/2001	2001-3/79
<u>BEAR</u>					
Natural Resources, Wildlife Resources	23393	R657-33	AMD	02/15/2001	2001-2/8
<u>BEEKEEPING</u>					
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<u>BIG GAME SEASONS</u>					
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<u>BOATING</u>					
Natural Resources, Parks and Recreation	23441	R651-101	5YR	01/18/2001	2001-4/62
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<u>BUDGETING</u>					
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<u>CAPITAL PUNISHMENT</u>					
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<u>CHILD PLACING</u>					
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	23121	R501-7	CPR	01/16/2001	2000-23/59
<u>CHIROPRACTIC PHYSICIANS</u>					
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<u>CHIROPRACTORS</u>					
Commerce, Occupational and Professional Licensing	23390	R156-73	AMD	02/15/2001	2001-2/2

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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<u>COMMUNICABLE DISEASES</u>					
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	23511	R251-102	5YR	02/05/2001	2001-5/40
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<u>CONCEALED FIREARM PERMIT</u>					
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<u>CONDUCT</u>					
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	23400	R251-301	AMD	03/13/2001	2001-3/8
<u>COSMETOLOGISTS</u>					
Commerce, Occupational and Professional Licensing	23260	R156-11a	AMD	see CPR	2000-22/5
	23260	R156-11a	CPR	03/06/2001	2001-3/79
<u>COVERAGE GROUPS</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	23396	R414-303	EMR	01/03/2001	2001-3/87
	23420	R414-303	AMD	03/13/2001	2001-3/52
<u>CRIMINAL INVESTIGATION</u>					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23447	R724-7 (Changed to R722-320)	NSC	02/01/2001	Not Printed
<u>CRIMINAL RECORDS</u>					
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<u>DENTAL HYGIENIST</u>					
Commerce, Occupational and Professional Licensing	23141	R156-69	AMD	see CPR	2000-19/10
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