

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 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.utah.gov/>

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SPECIAL NOTICES

ALCOHOLIC BEVERAGE CONTROL ADMINISTRATION

ALCOHOLIC BEVERAGE CONTROL COMMISSION 2003 MEETING SCHEDULE

Public Notice is hereby given of the 2003 calendar year meeting schedule for the Utah Alcoholic Beverage Control Commission. The Commission meets monthly at the department's administrative office at 1625 South 900 West in Salt Lake City, Utah. Meetings are held on the fourth Friday of the month, January through October; and on the third Friday in November and December. Meetings start at 9:00 a.m. and are open to the public. Meetings are subject to change.

To confirm meeting dates, contact: Sharon Mackay at (801) 977-6801.

GOVERNOR'S PROCLAMATION: SUPPLEMENTAL TO THE SIXTH SPECIAL SESSION FOR THE FIFTY-FOURTH LEGISLATURE

PURSUANT to Item 2 of the Proclamation issued December 9, 2002, calling the Legislature into a sixth special session, I add the following items to the agenda:

1. To consider a resolution honoring Murray City on its centennial.
2. To consider modifying provisions relating to counties to change the effective date of county annexations and to provide for the pro rata sharing of revenues, fees, and charges

(STATE SEAL)

IN TESTIMONY WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 18th day of December, 2002.

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

End of the Special Notices Section

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 December 3, 2002, 12:00 a.m., and December 16, 2002, 11:59 p.m. are included in this, the January 1, 2003, issue of the *Utah State Bulletin*.

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

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

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

From the end of the public comment period through May 1, 2003, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

**Administrative Services, Facilities
Construction and Management
R23-4
Contract Performance Review
Committee and Suspension/Debarment
From Consideration for Award of State
Contracts**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25783

FILED: 12/11/2002, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth procedures for suspension and debarment by the division and actions taken by a contract performance review committee.

SUMMARY OF THE RULE OR CHANGE: The amendments consist of repeal of provisions that are duplicative or inconsistent with statute and clarifications and technical amendments. Significant changes include: 1) repeal of a provision that refers to procurement by low bid that is inconsistent with the Procurement Code, 2) clarification that individuals may be debarred, and 3) repeal of provisions regarding the conduct of meetings by the contract performance review committee that are unnecessary or duplicative of statute regarding quorum and openness requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-5-103(1), 63-56-14(2), and 63A-5-208(6); and Section 63-56-48

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The amendments do not affect the state budget because the changes are technical in nature and do not have a fiscal impact.
- ❖ LOCAL GOVERNMENTS: The amendments do not affect local government as the rule only applies to procurement activities of the division and it does not apply to local governments.
- ❖ OTHER PERSONS: The amendments are technical in nature and do not affect the cost incurred by persons subjected to debarment proceedings or review by the contract performance review committee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments are technical in nature and do not affect the compliance cost incurred by persons subjected to debarment proceedings or review by the contract performance review committee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments are technical in nature and do not have a fiscal impact on businesses subjected to debarment proceedings or review by the contract performance review committee.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Joseph A. Jenkins, Director

R23. Administrative Services, Facilities Construction and Management.

R23-4. Suspension/Debarment and Contract Performance Review Committee ~~and Suspension/Debarment From Consideration for Award of State Contracts~~.

R23-4-1. Purpose and Authority.

(1) This rule sets forth the requirements regarding the Contract Performance Review Committee as well as the basis and guidelines for suspension or debarment from consideration for award of [state] contracts by the division. [

~~R23-4-2. Authority.~~

(2) This rule is authorized under Subsection 63A-5-208(6), which allows for the creation of a contract Performance Review Committee, Subsection 63A-5-103(1), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, and Subsection 63-56-14(2), which authorizes the Building Board to make rules regarding the procurement of construction, architect-engineering services, and leases.

R23-4-2. Definitions.

(1) "Committee" means a contract performance review committee established pursuant to Subsection 63A-5-208(6).

(2) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

(3) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(4) "Person" means any business, individual, union, committee, other organization, or group of individuals, not including a state agency.

R23-4-3. ~~[Authority to Award Contracts Only to Responsible and Qualified Person]~~ Suspended and Debarred Persons Not Eligible for Consideration of Award.

(4) ~~In accordance with the Utah Procurement Code, the director of the Division of Facilities Construction and Management shall let to the lowest responsible and qualified bidder any contract, except those~~

~~for professional services; the judgment of the director as to the responsibility and qualifications of a bidder shall be conclusive, except in cases of fraud or bad faith.~~

~~(2) No bidder, offeror, person, supplier, contractor or subcontractor supplying services, materials or labor,]No person who has been suspended or debarred by the division, will be allowed to bid or otherwise solicit work on [or participate in activities related to state]division contracts until they have successfully completed the suspension or debarment period[and have reestablished themselves as a responsible and qualified person].~~

R23-4-4. Causes for Suspension/Debarment and Procedure.

(1) The ~~statutory authority~~causes for debarment and procedures for suspension/debarment are found in ~~[Section]~~Sections 63-56-48 through 63-56-50, as well as Section 63A-5-208(8),

(2) The procedures for suspension/debarment ~~[pursuant to Subsection 63-56-48(1)]~~are as follows:

(a) The director, after consultation with the using agency and the Attorney General, may suspend a person from consideration for award of contracts for a period not to exceed three months if there is probable cause to believe that the person has engaged in any activity which may lead to debarment. If an indictment has been issued for an offense which would be a cause for debarment, the suspension, at the request of the Attorney General, shall remain in effect until after the trial of the suspended person.

(b) The person involved in the suspension and possible debarment shall be given written notice of the ~~state's~~division's intention to initiate a debarment proceeding. The using agency and the Attorney General will be consulted by the director and may attend any hearing.

(c) The person involved in the suspension and debarment will be provided the opportunity for a hearing where he may present relevant evidence and testimony. The director may establish a reasonable time limit for the hearing.

(d) The director, following the hearing on suspension and debarment shall promptly issue a written decision, if it is not settled by written agreement.

(e) The written decision shall state the specific reasons for the action taken, inform the person of his right to judicial or administrative review, and shall be mailed or delivered to the suspended ~~and~~or debarred person.

(f) The debarment shall be for a period as set by the Director~~of the Division of Facilities Construction and Management~~, but shall not exceed three years.

R23-4-5. Contract Performance Review Committee.

~~[(3)-]The Director may establish a [contract Performance Review]Committee [hereinafter "Committee" for purposes of this subsection] that shall be subject to the following:~~

~~[(a)](1) The Committee shall adjudicate complaints about contractor, subcontractor, and supplier performance by following the procedures of [Section 63-56-48]of this rule and applicable statute;~~

~~[(b)](2) The Committee shall, when appropriate, impose suspensions or debarments from bidding on state building contracts on contractors, subcontractors, and suppliers for cause; and~~

~~[(c)](3) The Director may request the Committee to hear other matters, such as any properly filed contract claims against the Division, issues regarding terminations of contracts or defective work, and any other matters that the Director determines will assist the Division in carrying out its responsibilities.~~

~~[(d)](4) In regard to [(a) and (b)](1) and (2) above, the Committee is acting as the chief procurement officer or the head of a purchasing~~

agency for purposes of Section 63-56-48. ~~[Notwithstanding Rule R23-4-42]above, when the Director creates a Contract Performance Review Committee, the "Director" as referred to in Rule R23-4-4(2) shall mean the "Contract Performance Review Committee."~~

~~[(e)](5) In regard to [(e)](3) above, the Committee is acting as a recommending authority to the Director.~~

~~[(f)](6) The Committee shall consist of three members selected by the Director. At least two of the three members shall have expertise with the type of issues that are likely to appear before the Committee and they shall not be a member of any State Board or part of any state agency. One of the three members may be an employee or officer of a client agency that is not involved with the specific subject matter and [entity]person being reviewed.~~

~~[(g)](7) [The presence of all three members shall be required for a quorum.~~

~~[(h) The Committee shall comply with the Open and Public Meeting Laws.~~

~~[(i)]The Committee shall, to the extent permitted by law, compel the attendance of any witnesses or production of documents.~~

~~[(j)](8) The Committee shall meet at such times as designated by the Director.~~

~~[(k)](9) The Committee shall issue all decisions or recommendations in writing with a brief description of the grounds for the decision.~~

~~[(l)](10) Any member of the Committee that has a conflict of interest or appearance of impropriety shall not participate in the matter related thereto, and the director shall appoint a replacement member for the committee, [except that if the conflict of interest or appearance of impropriety is one which would normally be construed as being against the interest of the entity being reviewed, the Committee member or the entity being reviewed shall state the nature of the] The person being reviewed has a duty to promptly raise any objections regarding conflict of interest or appearance of impropriety and the Committee member may not participate further if the director or the committee determines that the person being reviewed has raised[entity being reviewed promptly raises] a reasonable and lawful objection[~~to such further participation based on such conflict of interest or appearance of impropriety.~~~~

~~[(m)](11) Members of the Committee shall not have any communication with the parties regarding the subject matter to be considered by the Committee unless such communication is within the context of the official proceedings, except as approved in advance by the Committee and where such communication is disclosed in the official proceedings.~~

~~[(n)](12) The Director may adopt policies regarding the [Contract Performance Review-]Committee that are not inconsistent with this Rule.~~

**KEY: contracts, construction, construction disputes
[October 29, 1998]2003
Notice of Continuation January 28, 1998
63A-5-103 et seq.
63-56-5
63-56-48**



**Administrative Services, Facilities
Construction and Management
R23-7
Utah State Building Board Policy
Statement Master Planning**

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 25770
FILED: 12/11/2002, 11:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth requirements for the development and review of master plans of state facilities. It is being repealed because it is not consistent with current practice. The requirement that a master plan be developed for all current and planned capital facilities is not practical or cost effective. Rule R23-3, Planning and Programming for Capital Projects, will be amended to address the topics that were addressed in this rule.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-5-103(1)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This action repeals a requirement to develop master plans for all existing and planned facilities. This requirement was never fully implemented and repealing this requirement will make the rule consistent with current practice and funding. As a result, this action will not result in additional costs or savings in the state budget.

❖ **LOCAL GOVERNMENTS:** This rule only applies to state agencies and institutions so its repeal has no impact on local government.

❖ **OTHER PERSONS:** This rule only applies to state agencies and institutions so its repeal has no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only applies to state agencies and institutions so its repeal does not affect any compliance costs for others.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule only applies to state agencies and institutions so its repeal does not have a fiscal impact on business.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Joseph A. Jenkins, Director

R23. Administrative Services, Facilities Construction and Management.

~~[R23-7. Utah State Building Board Policy Statement Master Planning.~~

~~**R23-7-1. Purpose.**~~

~~— The purpose of this rule is to require agency planning for future capital facilities expansion and to establish a more effective tool for projecting future capital facilities needs for the state.~~

~~**R23-7-2. Authority.**~~

~~— This rule is authorized under Subsection 63A-5-103(1)(c), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.~~

~~**R23-7-3. Policy.**~~

~~— The Building Board requires that each agency prepare and maintain in current form, a Master Plan for all existing and planned capital facilities.~~

~~— The Building Board will review of agency Master Plans whenever considering requests for project funding. Review will also take place to assist agencies on long term planning. It is expected that Master Plans will present a realistic perspective of future growth that corresponds with projected program needs.~~

~~**KEY: planning programming budgeting, state office buildings, public buildings, state planning***~~

~~1994
Notice of Continuation January 28, 1998
63A-5-103 et seq.]~~

**Administrative Services, Facilities
Construction and Management**

R23-10

Naming of State Buildings

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 25784
FILED: 12/11/2002, 16:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth approval requirements for the naming of state buildings and designates which state entity has the authority to approve the building name.

SUMMARY OF THE RULE OR CHANGE: The amendments clarify that the entity that holds title to a facility has the authority to determine its name. The amendments also set forth requirements and procedures for the naming of buildings when the title is held by DFCM or the Building Ownership Authority. Finally, recognition is given of the Legislature's authority to name a building.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-5-103(1)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** As the amendments only clarify the authority and procedures for naming state buildings, there is no impact on the state budget. The ability to obtain donations through the naming of buildings and the cost of installing signage are not affected by these amendments.

❖ **LOCAL GOVERNMENTS:** There is no cost impact on local government as this rule only applies to the naming of state buildings.

❖ **OTHER PERSONS:** As the amendments only clarify the procedures for naming state buildings, there is no cost impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As the amendments only clarify the procedures for naming state buildings, there is no cost impact on other persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As the amendments only clarify the procedures for naming state buildings, there is no fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Joseph A. Jenkins, Director

R23. Administrative Services, Facilities Construction and Management.**R23-10. Naming of State Buildings.****R23-10-1. Purpose.**

This rule defines which ~~agencies~~ entities have the authority to name state buildings.

R23-10-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as the Division).

R23-10-3. Policy.

~~[Consistent with Section 63A-5-204, it]~~ It is the policy of the Utah State Building Board that the governmental entity ~~[which has ownership of]~~ that holds legal title to a given facility has ~~[responsibility for providing]~~ the authority to determine an appropriate name for that facility, if the facility is of a significant size or function and the entity deems the naming of the facility to be appropriate. Specifically, the Building Board will have responsibility for naming those buildings ~~[which are owned]~~ for which title is held by the Division ~~[of Facilities Construction and Management]~~ or the State Building Ownership Authority. ~~[, the]~~ The State Board of Regents will ~~[approve building names for colleges and universities, and]~~ govern the naming of buildings in the Utah System of Higher Education. ~~[the State Board of Education will approve names for state public education facilities. Also consistent with Section 63A-5-204, the Office of Trust Administrator, the Department of Transportation, the Board of State Lands, the Division of Expositions, the Department of Natural Resources, and the Utah National Guard are authorized to name facilities which are non-administrative in nature, such as state park facilities, transportation facilities, etc. If requested, agencies which exercise this prerogative are to provide a copy of internal rules or procedures which they follow in this process to the State Building Board.]~~

R23-10-4. Naming of Buildings Under the Authority of the Building Board.

Buildings for which the Building Board has responsibility for naming as provided for in Section R23-10-3 shall be addressed as follows.

(1) Descriptive names, such as those identifying functions housed in the building or names based on geographic location, may be determined by the entity occupying the building. For buildings that house more than one agency, the Division shall be responsible for determining the building's name. Any concerns with names under this subsection (1) shall be raised with the Building Board for final resolution.

(2) Honorary names must be approved by the Building Board. Prior to consideration by the Building Board, information shall be provided demonstrating the appropriateness of the naming request. This may include information about the individual to be honored, the desires of the individual's family, and the basis for honoring the individual by naming the specific building.

R23-10-5. Legislative Actions to Name a Building.

Any legislative action to name a building supercedes the provisions of this rule.

KEY: buildings, naming process[≠]

[1994]2002

Notice of Continuation January 28, 1998

63A-5-103 et seq.

▼ ————— ▼

Administrative Services, Facilities Construction and Management **R23-11** Facilities Allocation and Sale Procedures

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 25771

FILED: 12/11/2002, 11:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth procedures for allocating space and disposing of state property. It is being repealed because the provisions regarding a regular review of master plans and space efficiency are not consistent with current practice and the provisions regarding the disposition of property either are no longer consistent with statute or do not add anything substantive beyond that which is already provided by statute.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-5-103(1), and Section 63A-5-204

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This repeal will not have an impact on the state budget as the internal resources for the division to address the master plan and space efficiency requirements of the rule were largely lost in major reorganizations and budget reductions that occurred in FY1987 and FY1998. The repeal of this rule will not have an impact on current practice. Statutory provisions will continue to govern the procedures for sale of state property and the disposition of proceeds.

❖ **LOCAL GOVERNMENTS:** This rule only applies to state agencies and institutions so its repeal has no impact on local government.

❖ **OTHER PERSONS:** This rule only applies to state agencies and institutions so its repeal has no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only applies to state agencies and institutions so its repeal does not affect any compliance costs for others.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule only applies to state

agencies and institutions so its repeal does not have a fiscal impact on business.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Joseph A. Jenkins, Director

R23. Administrative Services, Facilities Construction and Management.

~~[R23-11. Facilities Allocation and Sale Procedures.~~

~~R23-11-1. Purpose.~~

~~— This rule provides the procedure for disposition of under-utilized facilities.~~

~~R23-11-2. Authority.~~

~~— This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.~~

~~R23-11-3. Procedures.~~

~~— Facilities allocation decisions by the State Building Board will be based upon information included in the agency facility master plan. The Building Board has established a policy of regular master plan review, which shall include an analysis of how efficiently existing facilities are being used. The review may indicate, or an agency may independently determine that there is a surplus or under utilized facility. The Division of Facilities Construction and Management will then determine if the facility could be used by other agencies. If so, the Division will negotiate a transfer of use with the affected agencies. If no alternative use is appropriate, the Division of Facilities Construction and Management with the approval of the Director of the Division of Finance will declare the facility surplus and sell the property. The sale proceeds will be disposed of in accordance with applicable statute. In all cases, the Division will consult with all affected agencies to assure an equitable resolution.~~

~~— If the Division of Facilities Construction and Management determines that land is under-utilized, and if the Building Board has not approved a master plan for that site, the Division has jurisdiction to otherwise reallocate the land use.~~

~~KEY: buildings, space utilization*~~
~~1994~~
~~Notice of Continuation January 28, 1998~~
~~63A-5-103 et seq.]~~



Commerce, Administration
R151-46b
Department of Commerce
Administrative Procedures Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25822
FILED: 12/16/2002, 15:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing clarifies Department procedures as to certain adjudicative proceedings, stating whether agency review and/or agency reconsideration is available. The rule filing also contains some clerical changes.

SUMMARY OF THE RULE OR CHANGE: Section R151-46b-7 allows the Division of Securities to use the "SD" code in referring to its adjudications, rather than "SEC," which is sometimes confused with the federal Securities Exchange Commission. Section R151-46b-7 also contains some clerical amendments. Section R151-46b-12 exempts from agency review medical malpractice prelitigation proceedings, requests for modification of disciplinary orders, and requests for entry into the diversion program. Section R151-46b-13 indicates when agency reconsideration is available.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6; and Title 63, Chapter 46b

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: These changes do not affect the State Budget, because they are intended to clarify existing agency procedures.
❖ LOCAL GOVERNMENTS: This rule does not apply to local governments. Therefore, there is no impact to local governments.
❖ OTHER PERSONS: No cost increase is anticipated, because the rule amendment clarifies existing procedures and is otherwise nonsubstantive in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost increase is anticipated, because the rule amendment clarifies existing procedures and is otherwise nonsubstantive in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change clarifies that following orders issued by the Division of Occupational and Professional Licensing: medical malpractice prelitigation proceedings, requests for modification of disciplinary orders, and requests for entry into the diversion program.

Specifically, these orders are not subject to the agency review process. In addition, the rule change indicates when agency reconsideration is available. No fiscal impact to businesses is foreseen as a result of these amendments, which merely describe existing procedures. The rest of the amendments are clerical in nature, and create no fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R151. Commerce, Administration.
R151-46b. Department of Commerce Administrative Procedures Act Rules.

R151-46b-7. Pleadings.

(1) Docket Number and Title.

The department shall assign a docket number to each notice of agency action and request for agency action. The docket number shall consist of a letter code identifying the division or committee in which the matter originated (CORP-Corporations; CP-Consumer Protection; CCS-Committee of Consumer Services; DOPL-Occupational and Professional Licensing; RE-Real Estate, AP-Real Estate Appraisers; S[EC]D-Securities), a numerical code indicating the year the matter arose, and another number indicating chronological position among notices of agency action or requests for agency action filed during the year. The department shall give each adjudicative proceeding a title ~~which~~that shall be in substantially the following form:

TABLE I

BEFORE THE (DIVISION/COMMITTEE)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of (the application, petition or license of John Doe)	(Notice of Agency Action) (Request for Agency Action) No. AA-2000-001
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(2) Content and Size of Pleadings.

Pleadings shall be double-spaced, typewritten and presented on standard 8 1/2 x 11 inch white paper. Pleadings shall contain a clear and concise statement of the allegations or facts relied upon as the

basis for the pleading, together with an appropriate prayer for relief when relief is sought.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Amendments to Pleadings.

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend a pleading only by leave of the presiding officer or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be longer, unless the presiding officer otherwise orders. Defects in a pleading ~~which~~ that do not affect substantial rights of a party need not be amended and shall be disregarded.

(5) Response to a Notice of Agency Action.

(a) Formal Adjudicative Proceedings.

In accordance with Subsection 63-46b-3(2)(a)(vi), a respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(b) Informal Adjudicative Proceedings.

(i) In accordance with Subsection 63-46b-5(1)(a), a respondent in an informal adjudicative proceeding may file, but is not required to file except as provided in Subsection (ii), a response to a notice of agency action.

(ii) The presiding officer may, upon a determination of good cause, require a person against whom an informal adjudicative proceeding has been initiated to submit a response by so ordering in the notice of agency action or the notice of receipt of request for agency action.

(c) Time Period for Filing a Response.

Unless a different date is established by law, rule, or by the presiding officer, a response to a notice of agency action or a notice of receipt of request for agency action shall be filed within 30 days of the mailing date of the notice.

(6) Motions.

(a) General. Any motion ~~which~~ that is relevant to an adjudicative proceeding and is timely may be filed. All motions shall be filed in writing, unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing. Subsection 63-46b-1(4)(b) shall not be construed to prohibit a presiding officer from granting a timely motion to dismiss for failure to prosecute, failure to comply with these rules, failure to establish a claim upon which relief may be granted, or any other good cause basis.

(b) Time for Filing Motions to Dismiss.

Any motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading if such a pleading is permitted unless the presiding officer allows additional time upon a determination of good cause.

(c) Memoranda and Affidavits.

The presiding officer shall permit and may require memoranda and affidavits in support or contravention of a motion. Unless otherwise governed by a scheduling order issued by the presiding officer, any memorandum or affidavits in support of a motion shall be filed

concurrently with the motion, any memorandum or affidavits in response to a motion shall be filed no later than ten days after service of the motion, and any final reply shall be filed no later than five days after service of the response.

(d) Oral Argument.

The presiding officer may permit or require oral argument on a motion.

R151-46b-12. Agency Review.

(1) Availability of Agency Review.

Except as otherwise provided in Subsection 63-46b-11(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director of the department within thirty days following the issuance of the order.

(2) When Agency Review Is Not Available.

(a) Agency review is not available as to any order or decision entered by the following agencies:

(i) the Real Estate Appraiser Licensing and Certification Board[-];

(ii) the Utah Motor Vehicle Franchise Board[-];

(iii) the Utah Powersport Advisory Board; and

(iv) the Pete Suazo Utah Athletic Commission.

(b) Agency review is not available for any decisions or orders entered by the Division of Occupational and Professional Licensing as to the following matters:

(i) Prelitigation proceedings conducted pursuant to Title 78, Chapter 14, the Utah Health Care Malpractice Act;

(ii) Requests for modification to disciplinary orders issued by the Division of Occupational and Professional Licensing; and

(iii) Requests for entry into the Diversion Program pursuant to Section 58-1-404(4).

(c)(i) [However, a] Agency reconsideration is available for orders or decisions exempt from agency review under Subsections (a) and (b)(ii), pursuant to R151-46b-13.

(ii) Agency reconsideration is not available for orders or decisions exempt from agency review under Subsections (b)(i) and (b)(iii), pursuant to Subsections 58-1-404(4) and 78-14-12(1)(c).

(3) Content of a Request for Agency Review - Transcript of Hearing - Service.

(a) The content of a request for agency review shall be in accordance with Subsection 63-46b-12(1)(b). The request for agency review shall include a copy of the order that is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging the facts bears the burden to marshal or gather all of the evidence in support of a finding and to show that despite such evidence, the finding is not supported by substantial evidence. The failure to so marshal the evidence permits the executive director to accept a division's findings of fact as conclusive. A party challenging a legal conclusion must support the argument with citation to any relevant authority and also cite to those portions of the record that are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed

under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party seeking agency review shall bear the cost of the transcript.

(e) A party seeking agency review shall, in the manner described in R151-46b-8, file and serve copies of the request for agency review, pleadings, and other submissions to the appropriate division whose order is challenged. If an attorney enters an appearance on behalf of the division, the party seeking agency review shall thereafter serve copies of relevant documents to the attorney.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Stay Pending Agency Review.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested, the order subject to review shall take effect according to its terms.

(b) The division or committee that issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the filing of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the filing of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63-46b-16(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63-46b-17(1)(b).

(9) Order on Review.

The order on review shall comply with the requirements of Subsection 63-46b-12(6).

R151-46b-13. Agency Reconsideration - When Agency Review Is Not Available.

(1) ~~When agency review is not available, and agency reconsideration is provided for under Subsection R151-46b-12(2)(c)(i), the following [Filing] requirements [for agency reconsideration] shall apply:~~

(a) ~~Before seeking judicial review of any order or decision [entered by the Real Estate Appraiser Licensing and Certification Board, the Utah Motor Vehicle Franchise Board, the Utah Powersport Advisory Board and the Pete Suazo Utah Athletic Commission], an aggrieved party may file a petition for reconsideration by the relevant [board or commission] agency pursuant to Section 63-46b-13.~~

(b) The request shall be signed by the party seeking reconsideration. Any response to the request for reconsideration shall be filed within ten days of the filing of the request for reconsideration. Responses relating to matters before the Real Estate Appraiser Licensing and Certification Board shall be filed with the Division of Real Estate. All other responses shall be filed with the executive director of the Department.

(2) Stay Pending Reconsideration.

Upon the timely filing of a request for reconsideration by the board, the effective date of the previously issued order or decision shall be suspended pending the completion of reconsideration.

(3) Order on reconsideration.

Any order on reconsideration constitutes final agency action for purposes of Section 63-46b-14. The order shall provide notice to any aggrieved party of any right to judicial review.

KEY: administrative procedures, government hearings

~~July 2, 2002~~2003

Notice of Continuation February 28, 2001

13-1-6

63-46b-1(6)



Commerce, Occupational and Professional Licensing

R156-22

Professional Engineers and Professional Land Surveyors Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25763

FILED: 12/09/2002, 15:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Professional Engineers and Professional Land Surveyors Licensing Board determined that changes needed to be made regarding examinations and to implement continuing education for professional engineers and professional structural engineers.

SUMMARY OF THE RULE OR CHANGE: In Sections R156-22-102, R156-22-204, and R156-22-205: amendments were made in these sections to: 1) eliminate the requirement that an applicant for licensure as a professional structural engineer must take three eight-hour exams. By deleting the NCEES Principles and Practice of Engineering (PE) examination for a professional structural engineer, only two exams, the National Council Examiners of Engineering and Surveying (NCEES) Structural I and II, will be required; 2) amend the list of Principles and Practice (PE) exams approved by the Division to include all PE exams that NCEES promulgates for licensure as a professional engineer; and 3) eliminate all references to the California Structural I and II examinations for licensure as a professional structural engineer. In Section R156-22-501: added that continuing education requirements now also apply to professional engineers and professional structural engineers.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur costs of approximately \$100 to reprint the rule once the proposed amendments are made effective and to update the application for licensure with the new requirements. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments.

❖ OTHER PERSONS: Persons seeking licensure as a professional structural engineer will see a savings of \$175 because they will not be required to take a third PE examination. The Division is unable to determine how many persons will be seeking licensure as a professional structural engineer in the future; thus an aggregate amount is not available for the savings. Licensed professional engineers and professional structural engineers will experience an additional cost as a result of implementing the continuing education requirement. Continuing education (CE) costs vary greatly depending on the choice of CE programs available to the licensee. The average cost is \$35 per hour. This equals approximately \$420 a year. The Division currently has approximately 7,000 licensed professional engineers and professional structural engineers resulting in an aggregate cost of \$2,940,000 per year to obtain 12 hours of continuing education per year (24 hours are required in a 2-year period).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed professional engineers and professional structural engineers will experience an additional cost as a result of implementing the continuing education requirement. Continuing education (CE) costs vary greatly depending on the choice of CE

programs available to the licensee. The average cost is \$35 per hour. This equals approximately \$420 a year to obtain 12 hours of continuing education.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change brings the Utah structural engineer licensing requirement in line with the national standard in accepting the successful completion of the Structural I and Structural II exams as sufficient to meet the examination requirements and removing the requirement for any additional examinations. The engineering industry would thus save \$175 per structural engineer applicant. A further substantive change requires continuing education for professional engineers and professional structural engineers. The exact cost to the engineering industry is difficult to determine. The estimated cost to the engineering industry is \$420 per licensed engineer per year. There are approximately 7,000 licensed engineers in Utah, but many of them are also licensed in other states and already meet continuing education requirements in those states. Ted Boyer, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/14/2003 at 9:00 AM, 160 East 300 South, Conference Room 428 (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: J. Craig Jackson, Director

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

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 22, as used in Title 58, Chapters 1 and 22, or these rules:

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and these rules means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE) or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination.

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers;

(ii) ~~passing a NCEES Principles and Practice of Engineering (PE) Examination;~~

~~—(iii)—passing the NCEES Structural I and II Examination[~~or passing a professional engineering examination that is substantially equivalent to the NCEES Structural I and II Examination~~]; and~~

(i~~ii~~) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(6) "Responsible charge" by a principal as used in Subsections 58-22-102(7) and 58-22-305(7)(a) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural

engineering or professional land surveying projects within an organization.

(7) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(8) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(9) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-601.

R156-22-204. Examination Requirements for Licensure as a Professional Engineer.

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

(a) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES;

(b) ~~the~~ a NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES~~[in one of the following disciplines:~~

~~—(i) agriculture, chemical, civil, control systems, electrical, environmental, fire protection, industrial, manufacturing, mechanical, metallurgical, mining/mineral, nuclear, and petroleum; or~~

~~—(ii) the NCEES Structural I examination]; and~~

(c) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(2) An applicant must have successfully completed the qualifying experience requirements set forth in Section R156-22-202, and have successfully completed the education requirements set forth in Section R156-22-201, and make application before being eligible to sit for the NCEES PE examination.

(3) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

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

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

(a) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(b) ~~a NCEES Principles and Practice (PE) Examination with a passing score as established by the NCEES;~~

~~—(c)—the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES[~~or the 16 hour California Structural Examination with a passing score as established by the California engineering board~~]; and~~

~~(d)~~ as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(2) An applicant must have successfully completed the experience requirements set forth in Subsection R156-22-203(2) and

make application before being eligible to sit for the NCEES Structural Exam ~~I and/or II examinations~~.

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

In accordance with Subsection[s] 58-22-303(2) and Section 58-22-304~~(4)~~, the qualifying continuing professional education standards for professional engineers, structural engineers and land surveyors are established as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: engineers, surveyors, professional land surveyors, professional engineers

~~August 1, 2002~~ 2003

Notice of Continuation January 27, 1998

58-22-101

58-1-106(1)

58-1-202(1)(a)

▼ ————— ▼

**Community and Economic
Development, Community
Development, History
R212-4
Archaeological Permits**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25787

FILED: 12/12/2002, 11:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule clarify the archaeological permit procedures and add the ability to issue permits on private lands at the request of the landowner.

SUMMARY OF THE RULE OR CHANGE: The following changes are accomplished through the amendment of Rule R212-4. In Section R212-4-1: expanded to include Section 9-8-201 which provides for the creation and purpose of the division; Section 9-8-203 which defines the division's duties and includes the provision to mark and preserve historic sites, areas, and remains; Section 9-8-304 which specifies the Antiquities section duties and includes responsibility for the stimulation of research, study, and activities in the field of antiquities; the marking, protection, and preservation of sites; the administration of site survey and excavation records; and the cooperation with local, state, and federal agencies and all interested persons to achieve the purposes of this part and Part 4; Section 9-8-305 which provides that the division shall make rules for the issuance of permits for the survey and excavation of archaeological resources on state lands and allows for the division to enter into memoranda of agreement to issue permits for federal and Native American lands within the state; Section 9-8-306 which requires a permit to excavate a privately owned designated landmark; Section 9-8-307

which requires any person who discovers any archaeological resources on privately owned lands to promptly report the discovery to the division and discourages field investigations except by those holding a permit from the division; and Section 9-8-404 which regards the issuance of a permit in consultation with the State Historic Preservation Officer. In Section R212-4-4: clarified the definition of "recovery" and added a definition of "permit" and "surface investigation." Retitled Section R212-4-5. Excavation requirements were deleted and added to Section R212-4-7. Retitled Section R212-4-6 and added language to clarify that a survey permit is issued to a qualified professional upon request and a permit holder may conduct archaeological surveys on behalf of landowners within the State of Utah. Deleted permit provision language and added to Section R212-4-8. In Section R212-4-7: added language to allow the division to issue a permit for excavation on lands owned or controlled by the state and its subdivisions, and on school and institutional trust lands when permitting authority is delegated to the division, when the applicant complies with the requirements of subsection C. The division may issue a permit for excavation on other lands, including private lands, when the landowner gives permission and the applicant complies with the requirements of subsection C. Changes to Sections R212-4-9, R212-4-10, R212-4-11, R212-4-12, R212-4-13, and R212-4-14 were simply due to reorganization of the rule sections. No substantial provisions were made to these sections other than renumbering.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-8-201, 9-8-203, 9-8-302, 9-8-304, 9-8-305, 9-8-306, 9-8-307, 9-8-404, 9-9-403, and 76-9-704; Title 63, Chapter 2; 16 USC 470 Sec. 304; and 43 CFR 7.8 Subtitle A (October 1, 2000 Edition) as amended

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The rule changes do not have a cost impact on the State budget as they only clarify archaeological permit procedures. The changes do not impact the cost of services procured.
- ❖ LOCAL GOVERNMENTS: The rule does not apply to local government so there is no cost impact on local government.
- ❖ OTHER PERSONS: There should be no compliance costs to other persons, because the changes to the rule clarify archaeological permit procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs to the regulated industry, because the changes to the rule clarify the archaeological permit procedures.

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

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

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, HISTORY
300 RIO GRANDE

SALT LAKE CITY UT 84101-1182, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Alycia Aldrich at the above address, by phone at 801-533-3556, by FAX at 801-533-3503, or by Internet E-mail at AALDRICH@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Wilson Martin, Acting Director

R212. Community and Economic Development, History.

R212-4. Archaeological Permits.

R212-4-1. General Authority.

Section 9-8-201 provides for the creation and purpose of the division.

Section 9-8-203 defines the division's duties and includes the provision to mark and preserve historic sites, areas, and remains.

Section 9-8-304 specifies the Antiquities section duties and includes responsibility for the stimulation of research, study, and activities in the field of antiquities; the marking, protection, and preservation of sites; the administration of site survey and excavation records; and the cooperation with local, state, and federal agencies and all interested persons to achieve the purposes of this part and Part 4.

Section 9-8-305 provides that the division shall make rules for the issuance of permits for the survey and excavation of archaeological resources on state lands and allows for the division to enter into memoranda of agreement to issue permits for federal and Native American lands within the state.

Section 9-8-306 requires a permit to excavate a privately owned designated landmark.

Section 9-8-307 requires any person who discovers any archaeological resources on privately owned lands to promptly report the discovery to the division and discourages field investigations except by those holding a permit from the division.

Section 9-8-404 regards the issuance of a permit in consultation with the State Historic Preservation Officer.

R212-4-2. Purpose.

The primary purposes of issuing a permit are to:

A. Ensure that survey, excavation and related work are consistently and reliably executed by qualified personnel; and,

B. Ensure that [the maximum amount of] educational, scientific, archaeological, anthropological, and historical information is recovered and preserved [together with the physical recovery of items, and not lost to the people of Utah]; and

C. Ensure that physical items recovered and owned by the state are not lost to the people of Utah.

R212-4-3. Applicability.

[This rule applies to lands owned or controlled by the state and its subdivisions, other than school or institutional trust lands. If, however, pursuant to Section 9-8-305, School and Institutional Trust Lands Administration delegates the authority to issue permits for survey or

excavation on school and institutional trust lands to the division, then this rule applies to school and institutional trust lands, while that delegation is in force.]This rule applies to all those seeking a permit from the division on any lands within the State of Utah.

R212-4-4. Definitions.

A. Terms used in this rule are defined in Section 9-8-302.

B. In addition:

1. "board" means the Board of State History;
2. "division" means the Division of State History;
3. "director" means the Director of the division;
4. "recovery" ~~[means any disturbance, removal, appropriation, injury or destruction of archaeological resources]~~means the scientific disturbance, removal, or study of subsurface and substantial surface archaeological resources by a qualified permit holder.

5. ~~["section" means the Antiquities Section of the division.]~~"permit" means a valid approval by the division issued to professionals meeting qualifications.

6. "section" means the Antiquities Section of the division.

7. "surface investigation" means the study, including insubstantial surface collection and limited subsurface testing, of archaeological resources for determination of eligibility for State or National Register.

R212-4-5. [Permit for Survey and Excavation of Archaeological Resources]Qualifications of Permit Holders.

~~[A.]~~The division shall issue a permit for the survey or excavation of archaeological resources to individuals and entities who demonstrate compliance with the following requirements:

~~[1.]~~A. Education, Experience, and Capabilities.

~~[a.]~~1. Archaeologists shall meet the minimum standards for education and experience set by federal regulation. The federal regulations, codified as 43 CFR 7.8, Subtitle A (October 1, 2000 Edition) as amended, Issuance of permits are hereby incorporated by reference.

~~[b.]~~2. Applicants shall submit a resume or vita as proof of compliance.

~~[c.]~~3. Applicants shall ~~[P]~~provide written evidence indicating the ability to conduct surveys or the proposed excavation in a manner consistent with current professional practice, including access to proper equipment and facilities, and use of other personnel qualified to execute portions of the research design.

~~2. Possess written permission from the landowner to enter the property for the purpose of excavation or survey.~~

~~B. For excavation permits, the division shall require that the applicant:~~

- ~~1. Provide a research design which:~~
 - ~~a) explicitly states the questions to be addressed;~~
 - ~~b) the reasons for conducting the work;~~
 - ~~c) defines the methods to be used;~~
 - ~~d) describes the analysis to be performed;~~
 - ~~e) outlines the expected results and the plans for reporting;~~
 - ~~f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;~~
 - ~~g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;~~
 - ~~h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standard of scientific rigor; and~~
 - ~~i) provides that no specimen, site or portion of any site is removed from the state of Utah without explicit permission from the division and~~

after consultation with landowners and any other agency managing any interest in the land.

~~2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.~~

~~3. Provide written proof of consultation with the Museum of Natural History.~~

~~4. Possess written proof of consultation with other agencies that manage other legal interests in the land.~~

~~C. Provide any other information requested by the division.]~~

R212-4-6. [Permit Provisions]Survey Permit Required for Archaeological Surveys.

~~[Permits shall contain the following provisions:~~

~~] A. [The permittees shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the section within the time specified in the permit]~~A survey permit is issued to a qualified professional upon request. The permit holder may conduct archaeological surveys on behalf of land owners within the State of Utah.

~~[B. A permittee who discovers human remains shall notify the landowner, and appropriate agencies pursuant to Section 9-9-403, and cease further activity, except after compliance with Section 9-9-403.~~

~~C. If the permittee fails to comply with statute, rule or the provisions of the permit, the division may terminate the permit and continue the study or grant another permittee the responsibility or opportunity to complete the research design.~~

~~D. Duration of Permits.~~

~~1. Permits for survey shall be issued for one year.~~

~~2. Permits for excavation shall be issued for the period of time necessary to accomplish the proposed work. The period of time may be extended by the division upon application of the permittee.~~

~~3. The Museum of Natural History shall be consulted if the duration of an excavation permit is to be modified.~~

~~E. Other provisions the division deems necessary.~~

~~]~~

R212-4-7. [Application Review]Excavation Permits.

~~[A. Application for a survey or excavation permit shall be made on a form provided by the section. Applicants shall fully complete the application form.~~

~~B. Applicants shall be notified of the acceptance or rejection of the completed application within 30 calendar days.~~

~~] A. The division may issue a permit for excavation on lands owned or controlled by the state and its subdivisions, and on school and institutional trust lands when permitting authority is delegated to the division, when the applicant complies with the requirements of sub-section C.~~

~~B. The division may issue a permit for excavation on other lands, including private lands, when the landowner gives permission and the applicant complies with the requirements of sub-section C.~~

~~C. The division shall require that the applicant:~~

~~1. Provide a research design which:~~

- ~~a) explicitly states the questions to be addressed;~~
- ~~b) the reasons for conducting the work;~~
- ~~c) defines the methods to be used;~~
- ~~d) describes the analysis to be performed;~~

~~e) outlines the expected results and the plans for reporting;~~

~~f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;~~

~~g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;~~

h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standards of scientific rigor; and

i) provides that no specimen, site or portion of any site is removed from the state of Utah, prior to placement in a museum, repository, or curation facility, without explicit permission from the division and after consultation with landowners and any other agency managing any interest in the land.

2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.

3. Provide written proof of consultation with the Museum of Natural History, if required by law.

4. Possess written proof of consultation with other agencies that manage other legal interests in the land.

5. Provide all other information requested by the division.

R212-4-8. ~~[Appeal of Decision]~~Permit Provisions.

~~[— Any applicant desiring review of a decision concerning an application may appeal the decision pursuant to R212-1.~~

~~] All permits shall contain the following provisions:~~

~~A. A permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the section within the time specified in the permit.~~

~~B. A permittee who discovers human remains shall cease further activity and notify the landowner, antiquities section and appropriate agencies pursuant to Section 9-9-403 and 76-9-704.~~

~~C. Duration of Permits.~~

~~1. Survey permits are issued for a period of up to two years.~~

~~2. Permits for excavation are issued for a period of time necessary to accomplish the proposed work.~~

~~a) The period of time may be extended by the division upon application of the permittee and~~

~~b) The Museum of Natural History shall be consulted by the permittee if the duration of a required excavation permit is to be modified.~~

~~D. Other provisions the division deems necessary.~~

R212-4-9. ~~[Violations of Statute or Rule]~~Application Review.

~~[— If the division receives information indicating a violation of statute or rule, the division shall make a good faith effort to notify the alleged violator of the legal requirements and potential penalties. The division shall also notify the landowner, and take other actions deemed necessary.~~

~~] A. Application for a survey or excavation permit shall be made on a form provided by the section. Applicants shall fully complete the application form.~~

~~B. Applicants shall be notified of the acceptance or rejection of the completed application within 30 calendar days.~~

R212-4-10. ~~[Records Access]~~Violations of Statute or Rule.

~~[The division shall maintain records of archaeological sites and localities. Access to location information within these records shall be restricted to those with legitimate research interests, and those holding valid permits, landowners, or state or federal agencies in accordance with the requirements contained in 16 USC 470 Section 304, the National Historic Preservation Act of 1966, as amended, and Title 63, Chapter 2.] If the division receives information indicating a violation of statute or rule, the division shall make a good faith effort to notify the alleged violator of the legal requirements and potential penalties. The division shall also notify the landowner, and take other actions deemed necessary.~~

R212-4-11. ~~[Exceptions]~~Terminating Permits.

~~[Exceptions to this rule may be granted, with landowner permission, in emergency cases requiring immediate action, if in the best judgment of the division the intent of the law will not be compromised. The division shall require that a permit application be filed as soon as possible. The division shall notify the board of this action as soon as possible. If the permittee fails to comply with any statute, rule, or the provisions of the permit, the division may terminate the permit, temporarily suspend the permit, place additional restrictions on a permit, require other conditions, refuse to issue a permit, or take other appropriate actions.~~

~~A. Before action is taken regarding a permit, the division shall notify the permittee.~~

~~1. The notification shall describe deficiencies in performance or qualifications.~~

~~2. The division shall provide the permittee a reasonable opportunity to respond.~~

~~B. The division shall take into account a permittee's timely response before taking action on a permit.~~

~~C. The division may seek a peer review as necessary.~~

R212-4-12. Appeal of Decision.

~~Any applicant desiring review of a decision concerning an application, termination, or other conditions placed on a permit may appeal the decision pursuant to R212-1.~~

R212-4-13. Records Access.

~~The division shall maintain records of archaeological sites and localities. Access to location information within these records shall be restricted to those with legitimate research interests, and those holding valid permits, landowners, or state or federal agencies in accordance with the requirements contained in 16 USC 470 Section 304, the National Historic Preservation Act of 1966, as amended, and Title 63, Chapter 2.~~

R212-4-14. Exceptions.

~~Exceptions to this rule may be granted, with landowner permission, in emergency cases requiring immediate action, if in the best judgment of the division the intent of the law will not be compromised. The division shall require that a permit application be filed as soon as possible. The division shall notify the board of this action as soon as possible.~~

KEY: administrative procedures, archaeology

~~[1993]2003~~

Notice of Continuation September 26, 2001

9-8-302

9-8-305

9-9-403

63-2

16 USC 470 Sec. 304

43 CFR 7.8 Subtitle A

▼ ————— ▼

Environmental Quality, Air Quality
R307-214-2
National Emission Standards for
Hazardous Air Pollutants

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25825

FILED: 12/16/2002, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment incorporates by reference new federal rules that may apply to Utah sources of hazardous air pollutants.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates by reference 16 new standards in order that Utah can enforce standards that apply to sources in Utah.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a); and 40 CFR Part 63

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR Part 63 (July 1, 2002), Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production; 40 CFR Part 63 (July 1, 2002), Subpart U National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; 40 CFR Part 63 (July 1, 2002), Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfit, and Stand-Alone Semichemical Pulp Mills; 40 CFR Part 63 (July 1, 2002), Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations; 40 CFR Part 63 (July 1, 2002), Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters; 40 CFR Part 63 (July 1, 2002), Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; 40 CFR Part 63 (July 1, 2002), Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; 40 CFR Part 63 (July 1, 2002), Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast; 40 CFR Part 63 (July 1, 2002), Subpart GGGG, National Emission Standards for Vegetable Oil Production: Solvent Extraction; 40 CFR Part 63 (July 1, 2002), Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production; 40 CFR Part 63 (July 1, 2002), Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations; 40 CFR Part 63 (July 1, 2002), Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations; 40 CFR Part 63 (July 1, 2002), Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations; 40 CFR Part 63 (July 1, 2002), Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing; 40 CFR Part 63 (July 1, 2002), Subpart VVVV - National Emission Standards for Boat Manufacturing; 40 CFR Part 63 (July 1, 2002), Subpart XXXX - National Emission Standards for Tire Manufacturing; and 40 CFR Part 63 (July 1, 2002), Subpart OOOOO - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Costs to administer the program are paid by affected sources as part of their fees under 40 CFR Part 70, Operating Permit Program.

❖ LOCAL GOVERNMENTS: No local governments are affected by these regulations.

❖ OTHER PERSONS: It is impossible to estimate the aggregated cost for the affected facilities though it is likely to be less than \$3,000,000. Affected sources will have to comply with the requirements whether or not they are incorporated into Utah's administrative rules, as they are already in effect at the federal level.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These standards regulate hazardous air pollutants and also volatile organic compounds that contribute to ozone formation. 1) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units affects at least three of Utah's four major source refineries. Nationally, 75% of refiners have installed at least one of the necessary control measures and no more than 30% of the facilities nationally will require new or upgraded controls. Nationally, the cost to refiners for refined petroleum products is expected to increase by 0.24% for refiners that must comply with the rule, the output of refineries is expected to decrease by 0.17%, and the value of domestic shipments is expected to increase by 0.07% because the expected price increase is more than offset by the decrease in volume. No plant closures or significant regional impacts are expected. 2) The Clean Harbors Aragonite Facility, a hazardous waste incinerator in Utah, believes it may be affected by three of the new standards because it processes waste from manufacturers subject to these rules: 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations; 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing; 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins. However, it seems unlikely that the facility will need do more than its present record keeping. 3) At this time, no other sources are known to be subject to any of the requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The refineries subject to these regulations are located within an urban area, and compliance with these regulations will reduce public exposure to hazardous air pollutants, as well as reducing compounds that contribute to formation of ozone.

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

ENVIRONMENTAL QUALITY

AIR QUALITY

150 N 1950 W

SALT LAKE CITY UT 84116-3085, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/27/2003 at 1:30 PM, Room 201 DEQ Bldg, 168 N. 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/05/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.**R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-2. Part 63 Sources.**

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, ~~2000~~2002 are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.

(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.

(~~7~~8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(~~8~~9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(~~9~~10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(~~10~~11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(~~11~~12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(~~12~~13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(~~13~~14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(~~14~~6) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(~~15~~7) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(~~16~~8) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(~~17~~9) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(~~18~~20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(~~19~~21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(~~20~~22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(~~21~~23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(~~22~~24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(~~23~~6) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(~~24~~7) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(~~25~~8) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(~~26~~9) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(~~27~~30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT)

(~~28~~31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(~~29~~32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(~~30~~3) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(~~31~~4) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(3[2]6) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(3[3]7) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(3[4]8) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(3[5]9) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

([36]40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

([37]41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

([38]42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

([39]43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(4[0]44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(4[1]5) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(4[2]6) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(4[3]7) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(4[4]8) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

([45]50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

([46]51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(55) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production: Solvent Extraction.

(56) 40 CFR Part 63, Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production.

(57) 40 CFR Part 63, Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations.

(58) 40 CFR Part 63, Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations.

(59) 40 CFR Part 63, Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations.

(60) 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing.

(61) 40 CFR Part 63, Subpart VVVV - National Emission Standards for Boat Manufacturing.

(62) 40 CFR Part 63, Subpart XXXX - National Emission Standards for Tire Manufacturing.

(63) 40 CFR Part 63, Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

KEY: air pollution, hazardous air pollutant[≠], MACT[≠]

[November 2, 2000]2003

Notice of Continuation February 3, 1999

19-2-104(1)(a)



Environmental Quality, Drinking Water R309-405

Compliance and Enforcement: Administrative Penalty

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 25824

FILED: 12/16/2002, 16:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to clarify the fining authority of the Drinking Water Board.

SUMMARY OF THE RULE OR CHANGE: The amendments make the rule more specific in the assessment and calculation of settlement amounts.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and the Safe Drinking Water Act (amended Aug. 6, 1996), Title XIV, Section 1419

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** No impact--The rule change clarifies the fining authority of the Drinking Water Board.
- ❖ **LOCAL GOVERNMENTS:** No impact--The rule change clarifies the fining authority of the Drinking Water Board.
- ❖ **OTHER PERSONS:** No impact--The rule change clarifies the fining authority of the Drinking Water Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change as a result of this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments listed under the Cost or Savings statements and the Compliance costs for affected persons above. The State is required to have administrative penalty authority in order to maintain primacy. Dianne R. Nielson, Ph.D., Executive Director

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ken Bousfield or Patti Fauver at the above address, by phone at 801-536-4207 or 801-536-4196, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at kbousfield@utah.gov or pfauver@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/14/2003 at 1:00 PM, Cedar City Council Chambers Room, 10 North Main Street, Cedar City, UT; 1/08/2003 at 1:00 PM, Carbon County Commission Chambers Room, 120 East Main Street, Price, UT; and 1/16/2003 at 1:00 PM, Weber County Commission Chambers Room, 2380 Washington Blvd, Ogden, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.

R309-405. Compliance and Enforcement: Administrative Penalty.

R309-405-1. Authority.

Utah Code Annotated, Sections 19-4-104 and 19-4-109

R309-405-2. Purpose, Scope, and Applicability.

(1) This rule sets the criteria and procedures the Board will use in assessing penalties to public drinking water systems for violation of its rules.

(2) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result with the intent of returning a public water system to compliance.

(3) This rule is applicable to all public drinking water systems.

R309-405-3. Limits on Authority and Liability.

Nothing in this rule should be construed to limit the Board's ability to take enforcement actions under Utah Code Annotated, Section 19-4-109.

R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts.

(1) Where the Executive Secretary determines that a penalty may be appropriate, the Executive Secretary shall propose a penalty amount by sending a notice of agency action, under Title 63, chapter 46b of the Administrative Procedures Act, to the public water system. The notice of agency action shall provide that the public water system may submit comments and/or information on the proposed penalty to the Executive Secretary within 30 days. The criteria the Executive Secretary will use in establishing a proposed penalty amount shall be as follows:

(a)(+) Major Violations: [~~\$3,000 to \$5,000~~]\$600 to \$1000 per day for each day of violation. This category includes violations with high potential for impact on drinking water users, major deviations from the requirements of the rules or Safe Drinking Water Act, intentional fraud, falsification of data, violations which result in a public water system being considered by the Environmental Protection Agency to be "Significant Non-Compliers" (SNC), or violations that may have a substantial adverse effect on the regulatory program. [~~This category also includes violations which result in an accumulation of 400 or more Improvement Priority System (IPS) points based on Section R309-150, the Water System Rating Criteria.~~] Specific violations that are subject to a major violation category include but are not limited to the following:

(i) Violations subject to \$1000 per day penalty:

(A) Any violation defined by R309-220-5 which would trigger a Tier 1 public notification.

(B) Not having any elements of a source protection plan as required in R309-600 for ground water sources and R309-605 for surface water sources.

(C) Failure to respond to an Administrative Order issued by the Drinking Water Board.

(D) Introduction by the water system of a source water that has not been evaluated and approved for use as a public drinking water source under R309-204.

(E) Construction or use of an interconnection to another public water system which has not been reviewed and approved in accordance with R309-550-9.

(F) Having over 20 IPS points (Improvement Priority System points based on R309-150, the Water System Rating Criteria) specifically for operating pressures below 20 psi as required by R309-105-9.

(G) Having 50 IPS points specifically for an inadequate well seal as required in R309-204.

(H) Having over 50 IPS points (not including the deficiencies in (F) and (G) above) specifically assessed in the physical facility section of an IPS report.

(I) Use of a surface water source without proper filtration treatment in accordance with R309-525 or 530.

(J) Exceeding the rated water treatment plant capacity as determined by review under R309-525 or 530.

(K) Insufficient disinfection contact time as evaluated under R309-215-7.

(ii) Violations subject to \$800 per day penalty:

(A) Having no components of a cross connection control program as required by R309-105-12.

(B) Having measured turbidity spikes of greater than 1.0 or 2.0 NTU in two consecutive readings in two consecutive months as defined in R309-215-9(4)(b)(iii) or (iv).

(b)(2) Moderate Violations: [~~\$2,000 to \$3,000~~]~~\$400 to \$600~~ per day for each day of violation. This category includes violations with a moderate potential for impact on drinking water users, moderate deviations from the requirements of the rules or Safe Drinking Water Act with some requirements implemented as intended, or violations that may have a significant notable adverse effect on the regulatory program. [~~This category also includes violations which result in an accumulation of 300 or more IPS points based on Section R309-150, the Water System Rating Criteria.~~] Specific violations that are subject to a moderate violation category include but are not limited to the following:

(i) Violations subject to \$600 penalty:

(A) Any violation defined by R309-220-6 which would trigger a Tier 2 public notification.

(B) Having a disapproved status on a source protection plan (R309-600 and 605) for a period longer than 90 days.

(C) Installation or use of disinfection equipment that has not been evaluated and approved for use under R309-520.

(D) Having measured turbidity spikes of greater than 0.5 or 1.0 NTU in two consecutive fifteen minute readings as defined in R309-215-9(4)(b)(i) or (ii) respectively.

(E) Insufficient source capacity, storage capacity, or delivery capacity as established by review of the system design under R309-500 through 550.

(F) Making unapproved modifications to infrastructure. The term infrastructure includes but is not limited to the disinfection process, surface water treatment process, and physical facilities such as water treatment plants, storage reservoirs, sources and distribution piping.

(c)(3) Minor Violations: Up to [~~\$2,000~~]~~\$400~~ per day for each day of violation. This category includes violations with a minor potential for impact on drinking water users, slight deviations from the rules or Act with most of the requirements implemented, or violations that may have a minor adverse effect on the regulatory program. [~~This category also includes violations which result in an accumulation of 200 or more IPS points based on Section R309-150, the Water System Rating Criteria.~~] Specific violations that are subject to a minor violation category include but are not limited to the following:

(i) Violations subject to \$400 per day penalty:

(A) Any violation defined by R309-220-7 which would trigger a Tier 3 public notification and the monitoring requirements of R309-204-4, except turbidity monitoring for surface water treatment facilities and violations termed as a minor monitoring violation in R309-150-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(B) Failure to upgrade a Preliminary Evaluation Report for a source protection plan as required in R309-600 and 605.

(C) Failure to update a source protection plan as required in R309-600 and 605.

(D) Construction or use of a storage reservoir that has not been evaluated for use under R309-545.

(ii) Violations subject to \$200 per day penalty:

(A) Lacking individual components of a cross connection control program as required by R309-105-12.

(B) Not having a certified operator on staff as required in R309-300-5(10) after 1 year or 4 operator certification exam cycles.

(C) Any minor monitoring violation as defined by R309-150-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(D) Any failure to monitor for individual filter effluent turbidity as required by R309-215-9(1)(b) for a surface water treatment facility.

(2) The Executive Secretary will assess the penalty, if any, after reviewing information submitted by the public water system. The public water system may appeal the assessment of the penalty to the Board by requesting a formal hearing under R309-115 and the Utah Administrative Procedures Act within 30 days of the date of assessment of the penalty.

R309-405-5. Factors for Seeking or Negotiating Amount of Penalties.

The Executive Secretary, in assessing the penalty, may take into account the following factors:

(1) Economic benefit. The costs a person or organization may save by delaying or avoiding compliance with applicable laws or rules.

(2) Gravity of the violation. This component of the calculation shall be based on:

(a) The extent of deviation from the rules;

(b) The potential for harm to drinking water users, regardless of the extent of harm that actually occurred;

(c) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(d) History of compliance or noncompliance. The penalty amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the penalty amount may be adjusted downward when it is shown that the violator has a good compliance record; and,

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the violation and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew, or should have known, of the legal requirements which were violated, and degree of recalcitrance.

(3) The number of days of non compliance

(4) Public sensitivity. The actual impact of the violation(s) that occurred.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement.

The Executive Secretary may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Utah Code Annotated Section 19-4-109:

(1) Payment of the penalty may be extended based on a person or organization's inability to pay. This should be distinguished from an unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) In circumstances where there is a demonstrated financial hardship, the Executive Secretary may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Executive Secretary.

(3) In some cases, the Executive Secretary may allow the violator to satisfy the penalty by completing a Supplemental Environmental

Project (SEP) approved by the Executive Secretary. The following criteria shall be used in determining the eligibility of such projects:

- (a) The project must be in addition to all regulatory compliance obligations;
- (b) The project must relate to some or all of the issues of the violation;
- (c) The project must primarily benefit the drinking water users;
- (d) The project must be defined, measurable and have a beginning and ending date;
- (e) The project must be agreed to in writing between the public water system and the Executive Secretary;
- (f) The project must not generate the public perception favoring violations of the laws and rules.

R309-405-7. Penalty Policy for Civil Proceedings.

Pursuant to Utah Code Annotated Section 19-4-109(2)(b), any person who willfully violates any rule or order made or issued pursuant to the Utah Safe Drinking Water Act, Utah Code Annotated Section 19-4-101 et seq. is subject to a civil penalty of not more than \$5000 per day for each day of violation. The Board and Executive Secretary shall apply the provisions of R309-405-4, 5, and 6 in pursuing or resolving willful violations except that the penalty range per day for each day of violation for major violations shall be \$3000 to \$5,000, for moderate violations shall be \$2000 to \$3000, and for minor violations shall be up to \$2000.

KEY: drinking water, environmental protection, administrative procedure, penalty
~~April 17, 2000~~ **March 5, 2003**
 19-4-104
 63-46b-4



**Environmental Quality, Radiation
 Control
 R313-12-3
 Definitions**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25785
 FILED: 12/12/2002, 08:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This subsection is being amended to clarify and add definitions for some licensed disciplines of the healing arts.

SUMMARY OF THE RULE OR CHANGE: The changes add definitions for advanced practice registered nurse, chiropractor, dentist, physician assistant, and podiatrist. The definitions for pharmacist, physician, and practitioner are changed to add clarity. All definitions for licensed disciplines refer to the applicable licensing Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-104 and 19-3-108

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no anticipated cost or savings to the State budget since the definitions do not have a fiscal impact on the State budget.
- ❖ **LOCAL GOVERNMENTS:** There will not be a cost or savings to local government because local government is not affected by this rulemaking.
- ❖ **OTHER PERSONS:** There will not be a cost or savings to other affected persons because the changes to definitions do not have a fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This changes in definitions do not have a compliance cost for persons affected by the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in definitions do not have a fiscal impact on businesses.

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

**ENVIRONMENTAL QUALITY
 RADIATION CONTROL**
 Room 212
 168 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/14/2003

AUTHORIZED BY: William Sinclair, Director

**R313. Environmental Quality, Radiation Control.
 R313-12. General Provisions.
 R313-12-3. Definitions.**

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A₁" means the maximum activity of special form radioactive material permitted in a Type A package.

"A₂" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package.

These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced material" means a material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building that is identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or

removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of the year shall begin in January, and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. The method observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Committed dose equivalent" ($H_{T,50}$), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" ($H_{E,50}$), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations or transformations per second (dps or tps).

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See sections 58-69-101 through 58-69-805, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" (H_T), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" (H_E), means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Executive Secretary" means the executive secretary of the board.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where " dQ " is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of " dm " are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).

"License" means a license issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Executive Secretary.

"Licensing state" means a state which has been provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviews state regulations to establish equivalency with the Suggested State Regulations and ascertains whether a State has an effective program for control of natural occurring or accelerator produced radioactive material (NARM). The Conference will designate as Licensing States those states with regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"NARM" means a naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source or special nuclear material.

"NORM" means a naturally occurring radioactive material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from

exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

"Permit" means a permit issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Department in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17a-101 through 58-17a-801, Pharmacy Practice Act.

"Physician" means ~~[an individual licensed by this state to practice medicine and surgery in all its branches. See Sections 58-67-101 through 58-67-803.]~~ both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. ~~[Examples would be:]~~ For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, [osteopath, and] chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from sources of radiation from licensed or registered operations. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Executive Secretary or is legally obligated to register with the Executive Secretary pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or
(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals 2.58×10^{-4} coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" (H_s) which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per cm^2), averaged over an area of one square centimeter.

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear

Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$((175(\text{Grams contained U-235})/350) + (50(\text{Grams U-233}/200) + (50(\text{Grams Pu}/200)))$ is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

(a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and

(b) classified by the U.S. Nuclear Regulatory Commission as low-level radioactive waste consistent with existing law and in accordance with (a) above.

"Waste collector licensees" means persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

KEY: definitions, units, inspections, exemptions

~~September 14, 2001~~ 2003

Notice of Continuation July 23, 2001

19-3-104

19-3-108

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**Environmental Quality, Radiation
Control
R313-28
Use of X-Rays in the Healing Arts**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25786

FILED: 12/12/2002, 08:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is to address concerns the Utah Radiation Control Board has with the exposure of healthy individuals to x-rays for the purpose of conducting a healing arts screening program.

SUMMARY OF THE RULE OR CHANGE: This rule is being changed to address the requirements relating to and for obtaining approval of a healing arts screening program. The requirements are being changed so that individuals shall be exposed to the useful x-ray beam for healing arts purposes only when the exposure has been specifically ordered and authorized by a licensed practitioner of the healing arts after a medical consultation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-104 and 19-3-108

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** It is likely that there will be a small cost savings to the State budget because employees will spend less time reviewing submissions for approval of a healing arts screening program. It is not possible to estimate the total cost savings because the agency has no information on future submissions of applications. However, it is estimated that the review time per submission will be reduced by about one hour.
- ❖ **LOCAL GOVERNMENTS:** There will not be a cost or savings to local government because local government is not affected by this rulemaking.
- ❖ **OTHER PERSONS:** Costs are expected to remain the same for other persons because this rulemaking does not involve assessment of application fees or make changes to inspection fees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rulemaking would not require an increase in regulatory inspection fees for the affected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Division of Radiation Control has reviewed the inspection fee schedule and determined that there will not be an increase in the inspection costs as a result of this rulemaking.

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

ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/14/2003

AUTHORIZED BY: William Sinclair, Director

R313. Environmental Quality, Radiation Control.

R313-28. Use of X-Rays in the Healing Arts.

R313-28-20. Definitions.

As used in R313-28, the following definitions apply:

"Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

"Actual focal spot" refer to "Focal spot."

"Aluminum equivalent" means the thickness of aluminum, type 1100 alloy, affording the same attenuation, under specified conditions, as the material in question. The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

"Assembler" means individuals engaged in the business of assembling, replacing, or installing one or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent if they assemble components into an x-ray system that is subsequently used to provide professional or commercial services.

"Attenuation block" means a block or stack, having appropriate dimensions 20 cm by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

"Automatic EXPOSURE control" means a device which automatically controls one or more technique factors in order to obtain, at a preselected location, a required quantity of radiation. Phototimer and ion chamber devices are included in this category.

"Barrier" refer to "Protective barrier".

"Beam axis" means a line from the source through the centers of the x-ray fields.

"Beam-limiting device" means a device which provides a means to restrict the dimensions of the x-ray field.

"Certified components" means components of x-ray systems which are subject to regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968.

"Certified system" means an x-ray system which has one or more certified components.

"Changeable filters" means filters designed to be removed by the operator.

"Coefficient of variation (C)" means the ratio of the standard deviation to the mean value of a population of observations.

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

"Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for setting the technique factors.

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"CT" means computed tomography.

"CT gantry" means the tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames which house these components.

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Diagnostic x-ray system" means an x-ray system designed for irradiation of part of the human body for the purpose of recording or visualization for diagnostic purposes.

"Entrance EXPOSURE rate" means the EXPOSURE free in air per unit time at the point where the useful beam enters the patient.

"Equipment" refer to "X-ray equipment".

"Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Filter" means material placed in the useful beam to absorb preferentially selected radiations.

"Fluoroscopic imaging assembly" means a subsystem in which x-ray photons produce a fluoroscopic image. It includes equipment housing, electrical interlocks, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

"Focal spot" means the area on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates. Also referred to as "Actual focal spot."

"Gonad shield" means a protective barrier for the testes or ovaries.

"Half-value layer or HVL" means the thickness of specified material which attenuates the beam of radiation to an extent that the EXPOSURE rate is reduced to one-half of its original value. In this definition, the contribution of scatter radiation, other than that which might be present initially in the beam concerned, is deemed to be excluded.

"Healing arts screening" means the use of x-ray equipment to examine individuals who are~~testing of a human population which is]~~ asymptomatic for the disease for which the screening is being performed and the use of x-rays are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to order x-ray tests for the purpose of diagnosis.~~Excluded from this definition are those individuals whose risk factors for the disease are greater than for the population at large.-]~~

"Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds: for example, kVp times mA times seconds.

"HVL" refer to "half value layer."

"Image intensifier" means a device installed in its housing which instantaneously converts an x-ray pattern into a light image of higher energy density.

"Image receptor" means a device, for example, a fluorescent screen radiographic film, solid state detector, or gaseous detector, which transforms incident x-ray photons to produce a visible image or stores the information in a form which can be made into a visible image. In those cases where means are provided to preselect a portion of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

"Irradiation" means the exposure of matter to ionizing radiation.

"Kilovolts peak" refer to "Peak tube potential".

"kV" means kilovolts.

"kVp" refer to "Peak tube potential."

"Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

"Leakage radiation" means radiation emanating from the diagnostic source assembly except for:

- (a) the useful beam, and
- (b) radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being ten millicoulombs, ten milliamperes seconds, or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"mA" means tube current in milliamperes.

"mAs" means milliamperes second or the product of the tube current in milliamperes and the time of exposure in seconds.

"Mammography imaging medical physicist" means an individual who conducts mammography surveys of mammography facilities.

"Mammography survey" means an evaluation of x-ray imaging equipment and oversight of a mammography facility's quality control program.

"Mobile x-ray equipment" refer to "X-ray equipment".

"Multiple scan average dose" means the average dose at the center of a series of scans, specified at the center of the axis of rotation of a CT x-ray system.

"New installation" means change, modification or relocation of new or existing shielding or equipment.

"Operator of diagnostic x-ray equipment" means either:

- (a) The individual responsible for insuring that the appropriate technique factors are set on the x-ray equipment, or
- (b) The individual who makes the radiation exposure.

"Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

"PBL" refer to "Positive beam limitation."

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"PID" refer to "Position indicating device."

"Portable x-ray equipment" refer to "X-ray equipment".

"Position indicating device (PID)" means a device, on dental x-ray equipment which indicates the beam position and establishes a definite source-surface (skin) distance. The device may or may not incorporate or serve as a beam-limiting device.

"Positive beam limitation" means the automatic or semi-automatic adjustment of an x-ray beam to the size of the selected image receptor, whereby exposures cannot be made without such adjustment.

"Primary beam scatter" means scattered radiation which has been deviated in direction or energy by materials irradiated by the primary beam.

"Primary protective barrier" refer to "Protective barrier".

"Protective apron" means an apron made of radiation absorbing materials, used to reduce radiation exposure.

"Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam to reduce the radiation exposure for protection purposes.

(b) "Secondary protective barrier" means the material which attenuates stray radiation.

"Protective glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

"Radiation therapy simulation system" means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and for confirming the position and size of the therapeutic irradiation field.

"Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

"Rating" means the operating limits of an x-ray system or subsystem as specified by the component manufacturer.

"Recording" means producing a permanent form of an image resulting from x-ray photons.

"Reference plane" means a plane which is displaced from and parallel to the tomographic plane.

"Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

"Scan increment" means the amount of relative displacement of the patient with respect to the computer tomographic x-ray system between successive scans measured along the direction of such displacement.

"Scattered radiation" means radiation that, during passage through matter, has been deviated in direction, energy or both direction and energy. Also refer to "Primary Beam Scatter".

"Shutter" means a device attached to the tube housing assembly which can intercept the entire cross sectional area of the useful beam and which has a lead equivalency at least that of the tube housing assembly.

"SID" refer to "Source-image receptor distance".

"Source" means the focal spot of the x-ray tube.

"Source to image receptor distance" means the distance from the source to the center of the input surface of the image receptor.

"Special purpose x-ray system" means that which is designed for irradiation of specific body parts.

"Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

"Spot film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor, including a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

"SSD" means the distance between the source and the skin entrance plane of the patient.

"Stationary x-ray equipment" refer to "X-ray equipment".

"Stray radiation" means the sum of leakage and scattered radiation.

"Technique factors" means the following conditions of operation.

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For other equipment, peak tube potential in kV and either;

(i) the tube current in mA and exposure time in seconds, or

(ii) the product of tube current and exposure time in mAs.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

"Tomographic plane" means that geometric plane which is identified as corresponding to the output tomogram.

"Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

"Tube" means an x-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements when they are contained within the tube housing.

"Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the switch or timer is activated.

"Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

"X-ray exposure control" means a device, switch, button, or other similar means by which an operator initiates or terminates the radiation exposure. The x-ray exposure control may include associated equipment, for example, timers and back-up timers.

"X-ray equipment" means an x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

"X-ray field" means that area of the intersection of the useful beam and one of the sets of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the EXPOSURE rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

"X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

R313-28-31. General and Administrative Requirements.

(1) Persons shall not make, sell, lease, transfer, lend, or install x-ray equipment or the accessories used in connection with x-ray equipment unless the accessories and equipment, when properly placed in operation and properly used, will meet the applicable requirements of these rules.

(2) The registrant shall be responsible for directing the operation of the x-ray machines which are under the registrant's administrative control. The registrant or registrant's agent shall assure that the requirements of R313-28-31(2)(a) through R313-28-31(2)(i) are met in the operation of the x-ray machines.

(a) An x-ray machine which does not meet the provisions of these rules shall not be operated for diagnostic purposes, when directed by the Executive Secretary.

(b) Individuals who will be operating the x-ray equipment shall be instructed in the registrant's written radiation safety program and be qualified in the safe use of the equipment. Required operator qualifications are listed in R313-28-350.

(c) The registrant of a facility shall create and make available to x-ray operators written safety procedures, including patient holding and restrictions of the operating technique required for the safe operation of the x-ray systems. Individuals who operate x-ray systems shall be responsible for complying with these rules.

(d) Except for individuals who cannot be moved out of the room and the patient being examined, only the staff and ancillary personnel or other individuals needed for the medical procedure or training shall be present in the room during the radiographic exposure and shall be positioned as follows:

(i) individuals other than the patient shall be positioned so that no part of the body will be struck by the useful beam unless protected by not less than 0.5 mm lead equivalent material;

(ii) the x-ray operator, other staff, ancillary personnel and other individuals needed for the medical procedure shall be protected from primary beam scatter by protective aprons or barriers unless it can be shown that by virtue of distances employed, EXPOSURE levels are reduced to the limits specified in R313-15-201; and

(iii) patients who are not being examined and cannot be removed from the room shall be protected from the primary beam scatter by whole body protective barriers of not less than 0.25 mm lead equivalent material or shall be so positioned that the nearest portion of the body is at least two meters from both the tube head and nearest edge of the image receptor.

(e) For patients who have not passed reproductive age, gonad shielding of not less than 0.5 mm lead equivalent material shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

(f) Individuals shall ~~not~~ be exposed to the useful beam ~~except~~ for healing arts purposes only when ~~unless~~ the exposure has been specifically ordered and authorized by a licensed practitioner of the healing arts after a medical consultation. Deliberate exposures for the following purposes are prohibited:

(i) exposure of an individual for training, demonstration or other non-healing arts purposes; and

(ii) exposure of an individual for the purpose of healing arts screening except as authorized by R313-28-31(2)(i).

(g) When a patient or film must be provided with auxiliary support during a radiation exposure:

(i) mechanical holding devices shall be used when the technique permits. The written procedures, required by R313-28-

31(2)(c), shall list individual projections where mechanical holding devices can be utilized;

(ii) written safety procedures, as required by R313-28-31(2)(c), shall indicate the requirements for selecting an individual to hold patients or films and the procedure that individual shall follow;

(iii) the individual holding patients or films during radiographic examinations shall be instructed in personal radiation safety and protected as required by R313-28-31(2)(d)(i);

(iv) Individuals shall not be used routinely to hold film or patients;

(v) In those cases where the patient must hold the film, except during intraoral examinations, portions of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 mm lead equivalent material; and

(vi) Facilities shall have protective aprons and gloves available in sufficient numbers to provide protection to personnel who are involved with x-ray operations and who are otherwise not shielded.

(h) Personnel monitoring. Individuals who are associated with the operation of an x-ray system are subject to the applicable requirements of R313-15.

(i) Healing arts screening. Persons proposing to conduct a healing arts screening program shall not initiate the program without prior approval of the Executive Secretary ~~or in the case of a research program, by an Investigational Review Board which has been approved by the United States Food and Drug Administration~~.

When requesting approval, that person shall submit the information outlined in R313-28-400. If information submitted becomes invalid or outdated, the Executive Secretary shall be notified immediately.

(3) Maintenance of records and information. The registrant shall maintain at least the following information for each x-ray machine:

(a) model numbers of major components;

(b) record of surveys or calculations to demonstrate compliance with R313-15-302, calibration, maintenance and modifications performed on the x-ray machine; and

(c) a shielding design report for the x-ray suite which states assumed values for workload and use factors and includes a drawing of surrounding areas showing assumed values for occupancy factors.

(4) X-ray records. Facilities shall maintain an x-ray record containing the patient's name, the types of examinations, and the dates the examinations were performed. When the patient or film must be provided with human auxiliary support, the name of the human holder shall be recorded. The registrant shall retain these records for three years after the record is made.

(5) Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

(6) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

(a) The speed of the screen and film combinations used shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for routine diagnostic radiological imaging, with the exception of standard film packets for intra-oral use in dental radiography. If the requirements of R313-28-31(6)(a) cannot be met, an exemption may be requested pursuant to R313-12-55.

(b) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

(c) X-ray systems, other than fluoroscopic, computed tomography, dental or veterinary units, shall not be utilized in

procedures where the source to patient distance is less than 30 centimeters.

R313-28-400. Information to be Submitted by Persons Proposing to Conduct Healing Art Screening.

(1) Individuals requesting that the Executive Secretary approve a healing arts screening program shall submit the following information~~[-for evaluation]~~:

(1)(a) name and address of the applicant and, where applicable, the names and addresses of agents within this State;

(2)(b) diseases or conditions for which the x-ray examinations are to be used;

(3)(c) description, in detail, of the x-ray examinations proposed in the screening program including the frequency of screening and the duration of the entire screening program;

(4)(d) description of the population to be examined in the screening program including age, sex, physical condition, and other appropriate information;~~[-and]~~

(5)(e) an evaluation of known alternate methods not involving ionizing radiation which could achieve the goals of the screening program and why these methods are not used in preference to the x-ray examinations~~[-]; and~~

(f) written evidence that:

(i) an Investigational Review Board, which has been approved by the United States Food and Drug Administration, has reviewed and approved the healing arts screening program; or

(ii) the United States Food and Drug Administration has approved the use of the x-ray examination for the diseases or conditions of interest.

(2) The Executive Secretary shall not approve a request for a healing arts screening program unless the submissions required by R313-28-400(1) are determined by the Executive Secretary to be complete and adequate.

KEY: dental, x-ray, mammography, beam limitation
[December 14, 2001]2003

Notice of Continuation October 10, 2001

19-3-104

19-3-108

▼ ————— ▼

**Health, Health Systems Improvement,
Licensing
R432-13
Freestanding Ambulatory Surgical
Center Construction**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25791

FILED: 12/12/2002, 18:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reasons for the changes include updating referenced national codes and guidelines to the current editions. This is accomplished by reference to Rule R432-4 where the updates are adopted.

SUMMARY OF THE RULE OR CHANGE: References updated to the latest editions of the International Building Code, International Fire Code, National Fire Protection Association (NFPA) 99 and Life Safety Code 101, International Mechanical Code, International Plumbing Code and the Guidelines for Design and Construction of Hospital and Health Care Facilities. In Subsections R432-13-3(1) and (4): updates to the current edition, the reference to the "Guidelines" and NFPA 101 for ASC's. In Subsection R432-13-3(2): updates the requirement for two operating rooms to be "Class C" as defined in the "Guidelines." In Subsections R432-13-5(8)(a-c): updates to the current edition of the National Electrical Code (1999 National Electrical Code). In Subsection R432-13-5(10): corrects a reference to lighting requirements. In Section R432-13-8: modifies the "Penalties" section with new language and penalty fees.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 1) International Building Code, 2000 edition; 2) International Fire Code, 2000 edition; 3) International Plumbing Code, 2000 edition; 4) International Mechanical Code, 2000 edition; 5) National Fire Protection Association 99, 1999 edition; 6) National Fire Protection Association 101, 2000 edition; and 7) Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 edition. All publications noted above, except items 5 and 7 are on file in the Division of Administrative Rules and at the State Fire Marshal's office per Subsection R710-4-1(1.10)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Costs to print the modifications and distribute to licensed health care facilities may be absorbed by the current appropriation. This rule is not retroactive and has an exception for renovations for one State of Utah operated ambulatory surgical center. If the State builds a new facility or adds a surgical operating room to the existing facility there could be a savings if the operating room is a class B or C or an increase if it is a Class C. The unit cost is identified under "Compliance costs for affected persons."

❖ LOCAL GOVERNMENTS: There are no ambulatory surgical centers owned or operated by local government. No costs are anticipated.

❖ OTHER PERSONS: This rule is not retroactive and there is an exception for renovations for the 21 currently licensed facilities. If a new facility is constructed with two Class C operating rooms the aggregate cost increase would be \$18,000. The unit cost is identified under "Compliance costs for affected persons."

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Guidelines adopt three tier requirements for operating rooms and recovery rooms in place of the single requirement. The Guidelines adopt the class A, B, and C levels of surgery that was developed by the American College of Surgeons. There are relaxed requirements for class A and B rooms. Class A outpatient operating rooms are reduced by 240 square feet (SF) or an approximate savings of \$54,000. Class B outpatient operating rooms are reduced in size by 110 SF or

an approximate savings of \$24,750. Class C rooms remain unchanged for inpatient operating rooms but increase 40 SF or approximately \$9,000 for outpatient operating rooms. These figures are based on \$225/SF for surgical areas. Compliance costs will be approximately \$9,000 per operating room for new construction after the rules are adopted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has been developed with the input of regulated industries, the Health Facility Committee and was circulated in draft form to the Utah Hospital Association. It appears that this will bring the rule up-to-date with current construction standards that the industry recognizes are necessary to protect public health and safety.
Rod L. Betit

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

**R432. Health, Health Systems Improvement, Licensing.
R432-13. Freestanding Ambulatory Surgical Center
Construction Rule.**

R432-13-3. General Design Requirements.

(1) Ambulatory Surgical Centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of the Guidelines for Design and Construction of Hospital and Health Care Facilities, Section 9.2., 9.5 and 9.9 including Appendix A, [1996-1997]2001 edition (Guidelines). Where a modification is cited, the modification supersedes conflicting requirements of R432-4 or the Guidelines.

(2) Ambulatory Surgical Centers shall consist of at least two Class C operating rooms, as outlined in the Guidelines section 9.5.F2, and support facilities.

(3) Ambulatory Surgical Centers shall be equipped to perform general anesthesia. Flammable anesthetics may not be used in Ambulatory Surgical Centers.

(4) Ambulatory Surgical Centers which are located within a building not constructed in accordance with NFPA 101, Life Safety Code, [Section 12-6]Chapter 20, shall be physically separated in accordance with requirements of the local building official having jurisdiction.

(a) The facility shall have at least two exits leading directly to the exterior of the building.

(b) Design shall preclude unrelated traffic through units or suites of the licensed facility.

R432-13-5. General Construction.

(1) The administration and public areas which are not part of the Ambulatory Surgical Center exiting system, may be located outside of the institutional occupancy envelope when authorized by the local building official having jurisdiction.

(2) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(3) An elevator shall be provided when an ambulatory surgical center is located on a level other than at grade. The minimum inside dimensions of the cab shall be at least 5'8" wide by 8'5" deep with a minimum clear door width of 3'8".

(4) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

(5) The facility shall provide for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using procedures established by the Utah Department of Environmental Quality and the local health department having jurisdiction.

(6) All rooms shall be mechanically ventilated.

(7) Access to medical gas supply and storage areas shall be arranged to preclude travel through clean or sterile areas. There shall be space for enough reserve gas cylinders to complete at least one routine day's procedures.

(8) An on-site emergency generator shall be provided and the following services shall be connected to the emergency generator:

(a) life safety branch as defined in 517-32 of the National Electric Code NFPA 70, 199[4]9 edition;

(b) critical branch as defined in 517-33 of the National Electric Code NFPA 70, 199[4]9 edition;

(c) equipment system as defined in 517-34 of the National Electric Code NFPA 70, 199[4]9 edition[;].

(9) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation shall be provided.

(10) Lighting shall comply with R432-4-23([20]21)([b]a).

R432-13-8. Penalties.

~~[— Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.~~

] The Department may assess a civil money penalty of up to \$5,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$5,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$500 per day for each day a new or renovated area is occupied prior to Bureau of Licensing approval.

KEY: health facilities
~~December 1, 1999~~2003
 Notice of Continuation February 1, 2000
 26-21-5
 26-21-16

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Health, Health Systems Improvement, Licensing **R432-14** Birthing Center Construction

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25792
 FILED: 12/12/2002, 19:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reasons for the changes include updating referenced national codes and guidelines to the current editions. This is accomplished by reference to Rule R432-4 where the updates are adopted and modifying Section R432-14-6.

SUMMARY OF THE RULE OR CHANGE: Adoption of the 2001 edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities and adding civil money penalties for violating the rule.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 1) International Building Code, 2000 edition; 2) International Fire Code, 2000 edition; 3) International Plumbing Code, 2000 edition; 4) International Mechanical Code, 2000 edition; 5) National Fire Protection Association 99, 1999 edition; 6) National Fire Protection Association 101, 2000 edition; and 7) Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 edition. All publications noted above, except items 5 and 7 are on file in the Division of Administrative Rules and at the State Fire Marshal's office per Subsection R710-4-1(1.10)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Costs to print the modifications and distribute to licensed health care facilities may be handled within the current appropriation.
- ❖ **LOCAL GOVERNMENTS:** No local government owns or operates a birthing center so there is no cost or savings anticipated.
- ❖ **OTHER PERSONS:** The rule is not retroactive and there is an exception for the renovations to the two existing Birthing Centers. If a new facility is constructed they will need to meet the minimum construction standard. The standards are somewhat different but not thought to add to or decrease the cost of construction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs anticipated as a result of adopting the amendment. Existing facilities are grandfathered and new facilities can meet the new standards without any increase in cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has been developed with the input of regulated industries, the Health Facility Committee and was circulated in draft form to the Utah Hospital Association. It appears that this will bring the rule up-to-date with current construction standards that the industry recognizes are necessary to protect public health and safety. Rod L. Betit

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

**R432. Health, Health Systems Improvement, Licensing.
 R432-14. Birthing Center Construction Rule.
 R432-14-3. General Design Requirements.**

(1) Birthing centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of sections 9.2 and 9.7 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, ~~1996-97~~2001 edition including Appendix A (Guidelines) and are adopted and incorporated by reference.

(2) Birthing Centers shall consist of at least two, but not more than five birthing rooms.

(3) Birthing rooms and ancillary service areas shall be organized in a contiguous physical arrangement.

(4) To qualify for licensure, regardless of size, a Birthing Center shall be constructed in accordance with NFPA 101, Life Safety Code, ~~Section 12-6~~Chapter 20, New Ambulatory Health Care ~~Centers~~Occupancies.

(5) Birthing Centers which are located within a building not constructed in accordance with NFPA 101, Life Safety Code, ~~Section 12-6~~Chapter 20, shall be physically separated in accordance with requirements established by the local building

official having jurisdiction and shall have at least two exits leading directly to the exterior of the building.

(6) Administration and public areas that are not part of the Birthing Center exiting system may be located outside of the institutional occupancy envelope when authorized by the local building official having jurisdiction.

(7) A Birthing Center located contiguous with a general hospital may share radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the Birthing Center a written agreement for the shared services.

R432-14-6. Penalties.

~~[Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.]~~ The Department may assess a civil money penalty of up to \$5,000 and deny approval for patient utilization of new or remodeled areas denied if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$5,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$500 per day for each day a new or renovated area is occupied prior to Bureau of Licensing approval.

KEY: health facilities

~~[December 1, 1999]~~ **2003**

Notice of Continuation February 1, 2000

26-21-5

26-21-16

▼ ————— ▼

Natural Resources; Oil, Gas and Mining; Oil and Gas **R649-3-1** Bonding

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25788

FILED: 12/12/2002, 13:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change strengthens the state's regulatory position, assuring that performance bonds will, in the event of an operator's default, come closer to addressing well plugging and site restoration costs.

SUMMARY OF THE RULE OR CHANGE: The change will increase the amount and the cost of basic drilling and operating bonds, provide for escalation of bonds through the use of the Producer Price Index, require full cost bonding once an operator is in violation, set financial tests before the Division accepts blanket bonds, and require tests for successor operators if the transfer of a blanket bond is requested.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-6-1 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** It is difficult to estimate the cost or savings to the state budget since this rule change is designed to prevent the state from having to assume a future unspecified responsibility for operator failure. Past experience has shown that once a standard is established by regulation or law, responsible compliance behavior follows in most cases. Thus, the impact may be insignificant.
- ❖ **LOCAL GOVERNMENTS:** No significant impact is anticipated for local government because the function of oil and gas conservation regulation is a responsibility which is reserved to state authority.
- ❖ **OTHER PERSONS:** No significant impact is anticipated for other persons since the two main groups impacted here are the State (addressed above in the impact to the "State Budget") and the operators (addressed in the "Compliance costs for affected persons" below). However, a slight but undetermined increase in surety premium payments may be made by operators to surety companies, who will gain additional revenue therefrom.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for operators will increase as the size of bonds or financial guarantees rise. Presently, the exact amount of the increase is difficult to determine but an increase of about 50% in the cost of initial bonds for wells on privately owned minerals or surface will be experienced. The inflation of bond amounts in concert with the Producer Price Index will cause all bonds to increase in cost at a rate approximately equal to the rate of inflation every five years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: An increase in cost to business will occur at a rate which is near to the rate of inflation as reflected by the Producer Price Index. Since this will result in an additional measure of financial protection and reduced risk for the State generally, it is deemed to be a necessary increase in the cost of doing business.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/01/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/22/2003 at 10:00 AM, Suite 1040A, 1594 West North Temple, Salt Lake City, UT and 2/26/2003 at 10:00 AM, Suite 1040A, 1594 West North Temple, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2003

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-3. Drilling and Operating Practices.

R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or Indian lease requirements and approved by the appropriate agency for all wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. ~~[Bond coverage previously established by an operator of existing wells shall be considered adequate by the division upon the adoption of these rules. In the future, bond coverage for drilling, or reentering a well or for a replacement bond if required for any reason, shall be considered in accordance with these rules.]~~

4. ~~]~~Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

3[4].1. Except for inflationary adjustment as described in subsections 4.1. and 4.2., [F]the bond for drilling or operating wells shall remain in full force and effect until liability thereunder is released by the division.

3[4].2. Release of liability shall be conditioned upon compliance with the rules and orders of the [b]Board.

4. For all drilling or operating wells, the bond amounts for individual wells and blanket bonds required in subsections 5. and 6. represent base amounts adjusted to year 2002 average costs for well plugging and site restoration. The base amounts are effective immediately upon adoption of this bonding rule, subject to division notification as described in subsection 4.3.

4.1. After adoption of this bonding rule, new bonds posted with the division for new operators or newly proposed drilling or operating wells shall be in amounts equal to the base amounts of subsection 5. and 6. including inflationary adjustment. The inflationary adjustment for such new bonds shall be in an amount escalated from January 1, 2003 to the date of posting of the bonds using the Producer Price Index for the Oil and Gas Field Services industry sector as published by the U.S. Bureau of Labor Statistics for the applicable time period.

4.2. Every five years from the date of revision or establishment of bonds in accordance with this bonding rule, the division will review such bonds for inflationary adjustment. The bond amounts for those reviewed bonds shall be escalated from the date of revision or establishment of the bond to the review date using the Producer Price

Index for the Oil and Gas Field Services industry sector as published by the U.S. Bureau of Labor Statistics for the applicable time period, subject to division notification as described in subsection 4.3.

4.3. The division shall provide written notification to each operator of the need to revise or establish bonds in amounts required by this bonding rule. Within 120 days of such notification by the division, the operator shall post a bond with the division in compliance with this bonding rule.

4.4. If the division finds that a well subject to this bonding rule is in violation of Rule R649-3-36., Shut-in and Temporarily Abandoned Wells, the division shall require a bond amount for the applicable well in the amount of actual plugging and site restoration costs. Such shut-in well bonds shall be subject to inflationary adjustment described in subsection 4.2.

4.5. The division shall provide written notification to an operator found in violation of Rule R649-3-36., and identify the need to establish increased bonding for shut-in wells. Within 30 days of notification by the division, the operator shall submit to the division an estimate of plugging and site restoration costs for division review and approval. Upon review and approval of the cost estimate, the division will provide a notice of approval back to the operator specifying the approved bond amount for shut-in wells. Within 120 days of receiving such notice of approval, the operator shall post a bond with the division in compliance with this bonding rule.

5. Except for inflationary adjustment as described in subsections 4.1. and 4.2., [F]the bond amount for drilling or operating wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of at least \$1,500[\$1,000], for each such well.

5.2. For wells of more than 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of at least \$15,000[\$10,000] for each such well.

5.3. For wells of more than 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of at least \$30,000[\$20,000] for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of at least \$60,000[\$40,000] for each such well.

6. If, prior to the January 1, 2003 revision of this bonding rule, an operator is drilling or operating more than one well on lands with fee or privately owned minerals, and a blanket bond was [may be] furnished and accepted by the division in lieu of individual well bonds, that operator shall remain qualified for a blanket bond with the division subject to the amounts described by this bonding rule and the procedures for inflationary adjustment as described in subsections 4.1. and 4.2.

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover all wells that the operator may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of at least \$15,000[\$10,000] shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of at least \$120,000[\$80,000] shall be required.

6.4. Subsequent to the January 1, 2003 revision of this rule, operators who desire to establish a new blanket bond that consists either fully or partially of a collateral bond as described in subsection 10.2. shall be qualified by the division for such blanket bond. Operators who elect to establish a surety bond as a blanket bond shall not require qualification by the division. In those cases where operator

qualification for blanket bond is required, the division will review the following criteria and make a written finding of the operator's adequacy to meet the criteria before accepting a new blanket bond:

6.4.1. The ratio of current assets to current liabilities shall be 1.20 or greater, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

6.4.2. The ratio of total liabilities to stockholder's equity shall be 2.50 or less, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the [b]Board for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the [b]Board may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well or when reviewing a change of operator for a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may require a change in the form or the amount of~~request a hearing before the board for its consideration of a greater~~ bond coverage. In such cases, the division will support its case for a change of bond coverage in the form of written findings to the operator of record of the well and provide a schedule for completion of the requisite changes.

8.1 Appeals of mandated bond amount changes will follow procedures established by Rule R649-10., Administrative Procedures.~~[Upon proper notice and hearing and for good cause shown, the board may allow bond coverage in a greater amount for specific wells.]~~

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations which would result in suspension or revocation of the surety's or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a

company that meets the standards of subsection 10.1.1. will have 120 days from the date of Division notification after enactment of the changes to subsection 10.1.1., or face enforcement action. When the Division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 10.1.1., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator which is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the division has approved the payment of interest to the operator.

10.2.1.4. The division shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.

10.2.3.5. The division shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in ~~subsections [R649-3-4.]5 and 6.~~ of all collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the division to complete plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in ~~subsections [R649-3-1.]5. and 6.~~

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide ~~sufficient [equivalent]~~ coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under ~~subsection [R649-3-1.]15.~~

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

~~14.3. When the operator of wells covered by a blanket bond changes, the division will review the financial eligibility of a new operator for blanket bonding as described in subsection 6.4., and the division will make a written finding concerning the applicability of blanket bonding to the prospective new operator.~~

~~14.4[3]. Transfer of the ownership of property does not cancel liability under an existing bond until the division reviews and approves a change of operator for any wells affected by the transfer of ownership.~~

~~14.5[4]. If a transfer of the ownership of property is made and an operator wishes to request a change to a new operator of record for the affected wells, then the following requirements shall be met:~~

~~14.5[4].1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee, and the operator shall request a change of operator for the affected wells.~~

~~14.5[4].2. The request [notice] shall describe each well by reference to its well name and number, API number, and its location, as described by the section, township, range, and county, and shall also include a proposed effective date for the operator change.~~

~~14.5[4].3. The request [notice] shall contain the endorsement of the new operator accepting such change of operator [transfer of ownership].~~

~~14.5.4. The request shall contain evidence of the new operator's bond coverage.~~

~~14.5[4.4]. The request [notice] may include a request to cancel liability for the well(s) included in the operator change that are listed under the existing operator's bond upon approval [receipt] by the division of an adequate replacement bond in the name of the new operator.~~

~~[14.5. Within 30 days of the receipt by the division of the notice of transfer of ownership, the new operator shall do one of the following:~~

~~— 14.5.1. Submit a new bond.~~

~~— 14.5.2. Accept responsibility for the wells under an existing blanket bond.~~

~~— 14.5.3. Produce the written consent of the operator and, if applicable, surety of the previous bond that their responsibility shall continue with respect to the new operator.]~~

~~14.6. Upon receipt of a request for change of operator, the division will review the proposed new operator's bond coverage, and if bond coverage is acceptable, the division will issue a notice of approval of the change of operator.~~

~~14.6.1. If the division determines that the new operator's bond coverage will be insufficient to cover the costs of plugging and site restoration for the applicable well(s), the division may deny the change of operator, or the division may require a change in the form and amount of the new operator's bond coverage in order to approve the change of operator. In such cases, the division will support its case for a change of the new operator's bond coverage in the form of written findings, and the division will provide a schedule for completion of the requisite changes in order to approve the operator change. The written findings and schedule for changes in bond coverage will be sent to both the operator of record of the applicable well(s) and the proposed new operator.~~

~~14.7[6]. If the request for operator change included a request to cancel liability under the existing operator's bond in accordance with subsection 14.5.5., and the division approves the operator change, then the division will issue a notice of approval of termination of liability under the existing bond for the wells included in the operator change. When the division has approved the termination of liability under a bond [in accordance with R649-3-1.14.2 and R649-3-1.14.3], the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the operator change [transfer of ownership].~~

~~14.8[7]. If all of the wells covered by a bond are affected by [a]n operator change [transfer of ownership], the bond may be released by the division in accordance with subsection [R649-3-]15.~~

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division or the division has issued a notice of approval of termination of liability for all wells covered by an existing bond.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of any previously plugged [the] well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in subsection [R649-3-1.]15.2.

15.1.3. Within 30 days after a request for bond release has been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the [b]Board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with subsection [R649-3-4]15.1.1, the division shall within 30 days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to subsection [R649-3-1]15.1.5, or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in subsection [R649-3-1]15.3 shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in subsection [R649-3-1]15.3 shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the Forfeiture of Bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the [b]Board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in subsection [R649-3-4]15.3, in addition to the notice requirements of the [b]Board procedural rules.

16.4. After proper notice and hearing, the [b]Board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the [b]Board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator all costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of subsection [R649-3-1]16.7, then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

KEY: oil and gas law

[November 1, 2001]2003

Notice of Continuation March 26, 2002

40-6-1 et seq.



Tax Commission, Administration

R861-1A-20

Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-401, 59-1-501, 59-2-1007, 59-7-517, 59-10-533, 59-12-114, 59-13-210, and 63-46b-3

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25823

FILED: 12/16/2002, 15:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Numerous statutes provide time frames within which an appeal must be filed. This section provides general guidance on how to determine whether an appeal is received within the statutory timeframe.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment replaces language that indicated time frames for appeals in the majority of instances with language that will apply to the time frames for appeals in all instances.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The proposed amendment clarifies the timeframe for appeals, and is consistent with statute and Tax Commission procedures.
- ❖ LOCAL GOVERNMENTS: None--The proposed amendment clarifies the time frame for appeals, and is consistent with statute and Tax Commission procedures.
- ❖ OTHER PERSONS: None--The proposed amendment clarifies the timeframe for appeals, and is consistent with statute and Tax Commission procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment clarifies the timeframe for appeals, and is consistent with statute and Tax Commission procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not have a fiscal impact on businesses.

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

TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY UT 84134-0002, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R861. Tax Commission, Administration.**R861-1A. Administrative Procedures.**

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, ~~59-1-401~~, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, ~~and 63-46b-3, and 63-46b-14.~~

A. A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

1. it is received in the Tax Commission offices on or before the close of business of the last day of the ~~[30-day period]~~time frame provided by statute; or
2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

B. A petition for redetermination ~~[must be received in the Commission offices no later than 30 days from the date of a notice that creates rights to appeal. The petition]~~ is deemed to be timely if:

1. the petition is received in the Tax Commission offices on or before the close of business of the last day of the ~~[30-day period]~~time frame provided by statute; or
2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the ~~[30-day period]~~time frame provided by statute.

C. Any party adversely affected by an order of the Commission may seek judicial review within ~~[30 days of the date that appears on the Commission's order]~~the time frame provided by statute. Copies of the appeal shall be served upon the Commission and upon the Office of the Attorney General.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

~~[May 17, 2002]~~**2003**

Notice of Continuation April 22, 2002

59-1-301
~~59-1-401~~
59-1-501
59-2-1007
59-7-517
~~59-10-532~~
59-10-533
~~59-10-535~~
59-12-114
59-13-210
63-46b-3
~~63-46b-14~~



Tax Commission, Auditing

R865-91-26

Petition For Redetermination of a
Deficiency Pursuant to Utah Code Ann.
Section 59-10-533

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25829

FILED: 12/16/2002, 17:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is not necessary as Sections R861-1A-20 through R861-1A-34 contain information necessary for appeals.

SUMMARY OF THE RULE OR CHANGE: The section is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-533

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The deleted language is redundant with other sections.
- ❖ LOCAL GOVERNMENTS: None--The deleted language is redundant with other sections.
- ❖ OTHER PERSONS: None--The deleted language is redundant with other sections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment removes redundant language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.

R865-91. Income Tax.

~~**R865-91-26. Petition For Redetermination of a Deficiency Pursuant to Utah Code Ann. Section 59-10-533.**~~

~~A. A petition for redetermination of a deficiency shall be in letter form, and in accordance with the requirements of Utah Code Ann.~~

~~Section 59-1-501, and effective January 1, 1988 shall conform with the Administrative Procedures Act.]~~

KEY: historic preservation, income tax, tax returns, enterprise
~~**[2002]2003**~~

Notice of Continuation April 22, 2002
59-10-533



Tax Commission, Auditing
R865-91-27
Redetermination of Tax Deficiency by
Tax Commission Pursuant to Utah
Code Ann. Section 59-10-525

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 25828

FILED: 12/16/2002, 16:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is not necessary as Sections R861-1A-20 through R861-1A-34 contain information necessary for appeals.

SUMMARY OF THE RULE OR CHANGE: The section is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-525

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The deleted language is redundant with other Tax Commission rules.
- ❖ LOCAL GOVERNMENTS: None--The deleted language is redundant with other Tax Commission rules.
- ❖ OTHER PERSONS: None--The deleted language is redundant with other Tax Commission rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment removes redundant language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--There are no fiscal impacts on businesses as a result of this section being deleted.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.

R865-91. Income Tax.

~~[R865-91-27. Redetermination of Tax Deficiency by Tax Commission Pursuant to Utah Code Ann. Section 59-10-525.~~

~~—A. If a taxpayer disagrees or has questions about a notice of deficiency, he may arrange to discuss these issues with officials of the Audit Division of the Tax Commission. This must be done prior to filing a petition for determination. The taxpayer may present evidence, legal authority, and argument on an informal basis with a view to reaching a mutual agreement to proper settlement of the case.~~

~~—B. After a petition for redetermination has been filed, the petitioner shall be granted the opportunity to present evidence, legal authority, and argument in respect to the issues raised by the pleadings. Such presentations shall, under ordinary circumstances, be made initially to designated officials of the Audit Division of the Tax Commission with a view to resolving the case or at least to clearly define the areas of disagreement. If the case is not resolved in this way, and if the petitioner requests, a hearing may be granted before the Tax Commission to present evidence, legal authority and argument regarding the areas of disagreement. After such a hearing, the Tax Commission shall promptly notify the petitioner of its decision as prescribed in Utah Code Ann. Title 59, Chapter 1.]~~

KEY: historic preservation, income tax, tax returns, enterprise [2002]2003 Notice of Continuation April 22, 2002 [59-10-525]



**Tax Commission, Auditing
R865-91-28**

Petition For Redetermination of Tax Commission Action On Claim For Refund Pursuant to Utah Code Ann. Section 59-10-533

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25826
FILED: 12/16/2002, 16:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is not necessary as Sections R861-1A-20 through R861-1A-34 contain information necessary for appeals.

SUMMARY OF THE RULE OR CHANGE: The section is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-533

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The deleted language is redundant with other Tax Commission rules.
- ❖ LOCAL GOVERNMENTS: None--The deleted language is redundant with other Tax Commission rules.
- ❖ OTHER PERSONS: None--The deleted language is redundant with other Tax Commission rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment removes redundant language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses as a result of this section being deleted.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.

R865-91. Income Tax.

~~[R865-91-28. Petition For Redetermination of Tax Commission Action On Claim For Refund Pursuant to Utah Code Ann. Section 59-10-533.~~

~~—A. A petition for redetermination of Tax Commission action on a claim for refund shall be in letter form. In addition to the requirements of Utah Code Ann. Title 59, Chapter 1, the claim shall cite the law or rules upon which petitioner relies as a basis for the claim. It must be supported by documentary evidence to substantiate any facts upon which petitioner relies to support all claims if the burden of proof is upon the taxpayer as provided in Utah Code Ann. Section 59-10-543.~~

~~— B. Any response to the Tax Commission's answer to the petition must be filed by mail, in letter form, within 15 days of receipt of the answer.]~~

KEY: historic preservation, income tax, tax returns, enterprise
[2002]2003
Notice of Continuation April 22, 2002
59-10-533



Tax Commission, Auditing
R865-91-29
Action of Tax Commission on
Redetermination Claim For Refund
Pursuant to Utah Code Ann. Section
59-10-535

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25819
 FILED: 12/16/2002, 14:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is not necessary as Sections R861-1A-20 through R861-1A-34 contain information necessary for appeals.

SUMMARY OF THE RULE OR CHANGE: The section is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-535

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The deleted language is redundant with other Tax Commission rules.
- ❖ LOCAL GOVERNMENTS: None--The deleted language is redundant with other Tax Commission rules.
- ❖ OTHER PERSONS: None--The deleted language is redundant with other Tax Commission Rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment removes redundant language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts to businesses as a result of this section being deleted.

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

TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.

R865-91. Income Tax.

~~**[R865-91-29. Action of Tax Commission on Redetermination Claim For Refund Pursuant to Utah Code Ann. Section 59-10-535.**~~

~~A. With reference to Utah Code Ann. Section 59-10-535, if a taxpayer disagrees with Tax Commission action on a claim for refund, he shall be given the opportunity to present evidence, legal authority, and argument in accordance with the same procedures prescribed by Rule R865-91-27 relative to redetermination of deficiencies.]~~

KEY: historic preservation, income tax, tax returns, enterprise
zones
[2002]2003
Notice of Continuation April 22, 2002
[59-10-535]



Workforce Services, Employment
Development
R986-400-404
Participation Requirements

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 25827
 FILED: 12/16/2002, 16:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment reflects changes in the health care alternatives through the Department of Health.

SUMMARY OF THE RULE OR CHANGE: The Department of Health requires a fee for enrollment in the health care plan known as Primary Care Network (PCN). Clients on General Assistance are in need of health care and the Department of Workforce Services (DWS) requires they have a method of obtaining that care. If the client has no other insurance or is not eligible for services from some other government health care program the client must enroll in PCN.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 35A-3-401 and 35A-3-402

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no costs or savings to the State budget because the enrollment fee will have to be paid for by the client, not the DWS.
- ❖ LOCAL GOVERNMENTS: This rule change does not apply to local governments so there are no costs or savings anticipated to local governments.
- ❖ OTHER PERSONS: Besides the affected persons listed below, no other persons will incur any costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Clients in the General Assistance program through the Department of Workforce Services will have to pay the \$50 annual enrollment fee unless it is waived by the Department of Health.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/15/2003 at 5:00 PM, 1385 South State Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.**R986-400. General Assistance and Working Toward Employment.****R986-400-404. Participation Requirements.**

(1) The client and spouse must participate, to the maximum extent possible, in an assessment and an employment plan as provided in R986-200. The only education or training supported by an employment plan for GA recipients is short term skills training as described in R986-400-403.

(2) The employment plan must include obtaining appropriate medical or mental health treatment, or both, to overcome the limitations preventing the client from becoming employable. The employment plan must provide that all adults age 19 and above who do not qualify for coverage under any other category of Medicaid and who are not covered by or do not have access to private health insurance, Medicare or the Veterans Administration Health Care System must enroll in the Primary Care Network (PCN) through the Department of Health. If a client cannot enroll in PCN because the Department of Health has placed a cap on PCN enrollment, the requirement will be excused during the period enrollment is impossible. The Department may, at its discretion, develop a program whereby eligible clients will be allowed to pay the enrollment fee in installments.

(3) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(4) A client is exempt from the requirements of paragraphs (1) and (2) of this section if the client has been approved for SSI, is waiting for the first check, and has signed an "Agreement to Repay Interim Assistance" Form.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, but not limited to UI, SSI/SSDI, VA Benefits, and Worker's Compensation.

KEY: general assistance, working toward employment

[July 1, 2002]2003

35A-3-401

35A-3-402



End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

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

From the end of the waiting period through May 1, 2003, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

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

The Changes in Proposed Rules Begin on the Following Page.

Environmental Quality, Environmental
Response and Remediation
R311-207
Accessing the Petroleum Storage Tank
Trust Fund for Leaking Petroleum
Storage Tanks

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 25161
Filed: 12/16/2002, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A public hearing to receive comments on the proposed rule changes was held on September 24, 2002. Written comments were accepted until October 1, 2002. Eight people made oral comments and thirteen entities made written comments. Six of the eight people making oral comments followed up with written comments similar to their statements. Consideration of these comments resulted in the revision of the rule eliminating sole source contracting justification to continue to allow such justification. The proposed rules on pay for performance contracting and setting standard labor rates were not adopted based on comments received.

SUMMARY OF THE RULE OR CHANGE: Sole source contract justification will continue to be allowed. No dollar amount threshold will be established to require pay for performance contracting. This decision will continue to be made on a case-by-case basis. Separate labor rate schedules for individual consultants will continue to be approved. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the September 1, 2002, issue of the Utah State Bulletin, on page 6. 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 amendment 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: Sections 19-6-105 and 19-6-419

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: "Table of Utah Petroleum Storage Tank Trust Fund Time and Material Reimbursement Standards" and "Utah Petroleum Storage Tank Fund, Maximum Allowable Rate List For Equipment and Supplies"

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The change in pay for performance contracting will eliminate any of the estimated \$1,140,000 savings to the Petroleum Storage Tank (PST) Fund that might have resulted through pay for performance contracting.
- ❖ **LOCAL GOVERNMENTS:** As owner/operators of underground storage tank systems, local governments will not receive any

savings due to lower fees that might have resulted through pay for performance contracting.
❖ **OTHER PERSONS:** Environmental consultants will continue to receive revenue at the existing level.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes restore the existing rules and consequent compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: By foregoing the possible \$1,140,000 savings to the PST Fund from using pay for performance contracting on all remediation systems costing more than \$150,000, the owner/operators who are participating in the PST Fund will see no reduction in the amount of money necessary to pay claims. If the PST Fund is to remain solvent, a fee increase will be required in the near future. This fee increase might have been delayed or reduced if the projected savings had been realized.

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

**ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND REMEDIATION
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gary Astin at the above address, by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2003

AUTHORIZED BY: Brent Bradford, Deputy Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.

R311-207-1. Definitions.

Definitions are found in Section R311-200.

R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Trust Fund.

(a) Any responsible party who is making any claim against the Petroleum Storage Tank Trust Fund shall have previously satisfied the requirements of Section R311-206-3(a), have a valid certificate of compliance at the time of product release by the covered UST; and meet the requirements of 19-6-424.

(b) Except as provided in Section R311-207-2(c), a responsible party eligible to receive payments in accordance with Section 19-6-419 shall submit to the Executive Secretary a written Eligibility Application to make a claim against the Petroleum Storage Tank Trust Fund,

(1) during a period for which that tank was covered by the fund;
or

(2) within one year after that fund-covered tank is closed; or

(3) within six months after the end of the period during which the tank was covered by the fund; or

(4) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(c) For eligible releases that are discovered and reported to the Executive Secretary after July 1, 1994, the responsible party is required to expend the first \$10,000 in eligible costs as determined by the Executive Secretary. For eligible releases that are discovered prior to July 1, 1994, the responsible party is required to expend the first \$25,000 in eligible costs as determined by the Executive Secretary.

(d) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in R311-207-2(b), shall constitute a claim against the fund in accordance with Section 19-6-424.

(e) The responsible party's share of eligible costs shall remain the same, regardless of the number of responsible parties who are associated with a release and covered by the fund. Only one responsible party can claim against the fund per release in accordance with 19-6-419.

(f) When a facility has an open release and a subsequent PST Fund eligible release occurs at that facility, the PST Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable by the Utah Underground Storage Tank Act 19-6-419. Additional PST Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release. The Executive Secretary shall determine the allowable coverage for a subsequent release. When the Executive Secretary has made a determination that the clean up standards established for the site pursuant to R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status. The maximum coverages allowed in 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

(a) Upon making a claim for coverage under the fund, and after receiving notice from the Executive Secretary that they are eligible to claim against the fund, the owner or operator shall respond to the compliance schedule issued by the Executive Secretary with work plans. The work plans may address three phases of the compliance schedule as determined by the Executive Secretary:

(1) tasks required to bring the site under control;

(2) tasks required to determine the extent and degree of the release; and

(3) tasks required to remediate the site until the Executive Secretary is satisfied that remediation has achieved the clean up goals as described in Section R311-211 or until further remediation is not feasible as determined by the Executive Secretary.

(b) The work plan shall include a budget for the work. The budget shall be in compliance with R311-207-4(e)(1) and ~~R311-207-4(i) and (j)~~(2). The budget shall include proposed costs in an itemized format as described in Section R311-207-4(a).

(c) The proposed consultant must have an approved Statement of Qualification. The Statement of Qualification shall include information about the qualifications of all proposed consultants or other persons

who will be performing investigation or corrective action activities concurrently with the work plans. The submission shall include information required by the Statement of Qualification form prepared by the Executive Secretary, and at least three letters of reference from entities that have retained the services of the consultant. This Statement of Qualification must be updated annually and shall be approved, by the Executive Secretary, for a period of one year. Letters of reference are not required to be resubmitted annually. The information submitted shall demonstrate that the following standards have been met:

(1) The proposed consultant shall be of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;

(2) The person directly overseeing the work must be a Certified UST Consultant in conformance with R311-201-2(a), R311-201-4(a) and ~~[c]~~R311-201-6(a) and,

(3) Personnel must have completed Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law.

(4) The consultant must carry the following insurance:

(A) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;

(B) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and

(C) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(d) The work plan shall include information about the responsible party's contract with any proposed consultant or other person performing remedial action concurrently with the work plans. That information shall demonstrate that the following requirements have been met, as determined by the Executive Secretary:

(1) The contract shall be with the consultant, and shall specify the key personnel, for which qualifications are submitted under R311-207-3(c);

(2) The contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(3) The consultant shall have no cause of action against the state for payment;

(4) The contract will specify a subcontracting method consistent with the requirements of R311-207;

(5) The contract shall require, and include documentation that the consultant carries the insurance specified in R311-207-3(c)(5).

(6) Payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(7) The contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(8) Any other requirements specified by the Executive Secretary.

(e) The work plan shall include any additional information required by 40 CFR 280.

(f) The Executive Secretary may waive specific requirements of Section R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected. The Executive Secretary may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the fund will be affected.

(g) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the Executive Secretary shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. For costs to be covered by the fund, the Executive Secretary must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).

(h) A request for time and material reimbursement from the Fund must be received by the Executive Secretary within one year from the date the included work was performed or reimbursement shall be denied. If there are any deficiencies in the request, the owner/operator shall have 90 days from the date of their notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed. If a release was initially denied eligibility and is subsequently found to be eligible, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement. The responsible party may submit claims for reimbursement where the work is more than one year old until April 2, 2003.

(i) The request for final reimbursement from the fund must be received by the Executive Secretary within one year from the date of the "No Further Action" letter issued by the Executive Secretary or reimbursement shall be denied. If a release is re-opened as provided for in the "No Further Action" letter, payments from the fund may be resumed when approved by the Executive Secretary.

R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

(a) In order to receive payment from the fund, a claimant shall submit an invoice to the Executive Secretary. The invoice from the owner to the fund shall be on the form or forms provided by the Executive Secretary. Reimbursement may be on a pay for performance or on a time and material basis as approved in advance by the Executive Secretary. All costs for time and material reimbursement shall be itemized at a minimum to show the following:

- (1) amounts allocated to each approved work plan budget;
- (2) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;
- (3) sampling, reporting, and laboratory analysis costs;
- (4) equipment rental and materials;
- (5) utilities;
- (6) other direct costs; and
- (7) other items as determined by the Executive Secretary.

(b) All itemized expenses shall indicate the full name and address of the company or contractor providing materials or performing services.

(c) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the Executive Secretary, with a copy of the original bill provided to the Executive Secretary by the owners or operators. The claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Sections R311-207-5 and R311-207-4(e).

(d) For time and material based reimbursement, before receiving payment under Section 19-6-419(1)(b), the responsible party shall provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the Executive Secretary, unless the Executive Secretary has agreed to other arrangements. The owner or operator shall remain primarily liable, however, for all costs incurred

and should obtain lien releases from the company or contractor providing material or performing services.

(e) For time and material based reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by an environmental consultant or contractor shall include one or more of the following items:

(1) a minimum of three competitive bids by responsive bidders. To be competitive:

(A) Two of the bids must be from bidders who are not related parties. "Related parties" for the purpose of this rule, shall mean organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(B) The bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition. The bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(C) For frequently used services such as drilling, competitive bid schedules may be taken by the consultant once each calendar year in January with the results provided to the Executive Secretary. The prices from the lowest responsible bidder will be used for at least the following 12 months and will remain in effect until re-bid by the consultant and approved by the Executive Secretary. The Executive Secretary may reject bid prices that are not customary, reasonable and legitimate. The lowest bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the owner for these services, regardless of whether the owner accepts that bid or another;

(2) sole source justification:

(A) Analytical laboratories may be justified based on service, data quality and cost;

(3) documentation that expenses have been for reasonable, customary, and legitimate purposes; or

(4) other documentation as required or requested by the Executive Secretary.

(f) In accordance with Section 19-6-420, the Executive Secretary may not authorize payment from the fund for services provided by consultants, contractors, or subcontractors which are in non-compliance with the requirements of Section R311-207 or any other applicable federal, state, or local law.

(g) Any third party claims brought against the owner or operator or any occurrence likely to result in third party claims against the owner or operators as a result of the release must be immediately reported to the State Risk Manager and to the Executive Secretary.

(h) The Executive Secretary may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Executive Secretary. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Executive Secretary. [

~~(i) Unless otherwise directed by the Executive Secretary, all remedial action that is estimated to cost \$150,000 or more including design, installation, operations and maintenance for the life of the~~

~~project shall be competitively bid on a pay for performance basis. The Executive Secretary will make the estimate taking into account information provided by the consultant. The Executive Secretary may negotiate pay for performance contracts for remedial action or investigation costing less than \$150,000. The Executive Secretary will act as the coordinator between the responsible party and prospective contractors. The Executive Secretary will prepare, advertise and open the bids. The lowest responsive bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the owner for the remedial action, regardless of whether the owner accepts that bid or another.]~~

R311-207-5. Responsible Parties' Standard Liability and Customary, Reasonable and Legitimate Expenses.

(a) Costs claimed by the responsible party in accordance with Section 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the Executive Secretary. The Executive Secretary may determine the amount of fund monies that will be reimbursed to an owner or operator for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of R311-207-7 or such other methods that are applicable to the item or task. As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate: performing abatement, investigation, site assessment, monitoring, or corrective action activities; providing alternative drinking water supplies; and settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(b) This rule incorporates by reference the TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated ~~July 16~~November 14, 2002. This document contains specific items that will and will not be reimbursed by the Fund.

(c) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE[S] LIST FOR EQUIPMENT AND SUPPLIES as revised ~~June 40~~November 14, 2002. This document contains specific rates the Fund will reimburse the responsible party or consultant for the included items.

(d) If a claim that does not comply with the requirements of R311-207 is returned by the Executive Secretary to a responsible party or consultant for correction, the responsible party or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

R311-207-6. Subrogation.

When the State makes a payment from the Petroleum Storage Tank Trust Fund, the State shall have the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible. The petroleum underground storage tank owner or operator or both who receive payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the State's rights and do nothing to prejudice them.

R311-207-7. Consultant Labor Codes, Titles, Duties and Fee Schedules.

(a) This rule incorporates by reference the Consultant Personnel Qualifications and Task Descriptions table, dated May 1998, and consisting of standardized personnel qualification categories and task descriptions to be used for PST Fund-reimbursable activities.

Consultants must assign to one of the categories listed in the table, any service time for an individual that is billed to a responsible party or directly to the PST Fund and for which reimbursement is claimed, unless the duties of the individual are so unusual that they do not closely approximate any of the listed categories. By submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills and experience.

(b) A consultant may file with the Executive Secretary, and amend once a year in January (absent unusual circumstances), the hourly fees at which it bills clients in Utah for the service of its personnel as described in (a). The Executive Secretary shall calculate new allowable reimbursement rates once a year. Consultant fees, reimbursement rate schedules and amendments must be maintained in confidence by and accessible only to the staff of the Executive Secretary, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure. The calculated maximum allowable reimbursement rates must be maintained in confidence by and accessible only to the staff of the Executive Secretary.

(c) When fee schedules, from companies who have performed work reimbursed by the Fund, have been filed in a number sufficient for meaningful statistical analysis, the Executive Secretary shall compute a range of allowable reimbursement rates for each code listed in (a), the maximum of each range shall be the mean fee for each code plus one standard deviation (rounded up to the nearest whole dollar) unless modified as provided for in R311-207-7(e). The Executive Secretary shall then notify each filing firm whether its fees exceed the range of allowable reimbursement rates. If they do exceed the allowable range, the firm shall then resubmit a revised fee schedule that is within the allowable range. The amount by which a consultant's fee for a particular code exceeds the allowable reimbursement rate will be presumed unreasonable and will not be reimbursed by the Fund.

(d) The Executive Secretary may approve a range of reimbursement rates for a particular category when proposed by a consultant. However, the maximum of this range shall not exceed the maximum reimbursement rate as calculated in R311-207-7(c). When a range is proposed, the average of the range will be used for the calculations in R311-207-7(c).

(e) If a consultant's fees exceed the maximum of the range in not more than three categories but are lower in the other categories, the average of the maximum reimbursement rates as calculated in R311-207-7(c) for the categories for which that consultant provides services will be calculated. If the average of the consultant's fees is lower than this average, the Executive Secretary may approve all of the fees as proposed.

(f) The Executive Secretary may request a detailed explanation of fee structures when a submitted fee appears to vary significantly from those submitted by other consultants for the same code. The Executive Secretary reserves the right not to use fees that significantly vary from similar fees submitted by other consultants, fees from consultants who have not submitted claims for reimbursement, fees from consultants who have not submitted proper documentation for claim reimbursement, fees from consultants that do not currently have key personnel holding valid certification as a Certified UST Consultant and other fees not deemed acceptable by the Executive Secretary.

(g) A consultant not filing its schedule of fees must submit its invoices for services formatted in accordance with R311-207-7(a). Any fees which exceed the average of allowable reimbursement rates will be presumed unreasonable.

(h) A responsible party or consultant may overcome the presumption that a fee is unreasonable by presenting clear and concise evidence to the Executive Secretary that their fees are reasonable and

~~customary. Excessive overhead factors will not meet this test. [The Executive Secretary will establish a single allowable rate for each labor category. The rates will be calculated by determining the mean of the rates proposed by consultants who are approved to perform work reimbursable by the PST Fund. The Executive Secretary will request proposed rate schedules from consultants every three years beginning in December 2002. The rates will become effective January 1 of the following year. For those years that the Executive Secretary does not request proposed rate schedules, the Executive Secretary may adjust rates annually in accordance with the percentage change in the bureau of labor statistics annual number for the producer price index for finished goods less food and energy not seasonally adjusted. The percent change will be calculated based on the annual change for the calendar year ending November 30. Adjusted labor rates will be effective January 1 of the following year.~~

~~—(e) The Executive Secretary shall not include in the calculation of the mean any proposed rates that are not customary and reasonable based on a comparison of previously approved rates.]~~

(i~~d~~) The Executive Secretary may determine the amount of fund monies that will be reimbursed to ~~[an owner operator]~~ a responsible party for commonly performed tasks. The amount of fund monies that will be reimbursed for a particular task, item or activity may be established by R311-207-7(c~~b~~), competitive bid, market survey or other applicable method as determined by the Executive Secretary.

Public comment will be taken before proposed reimbursement rates are adopted.

R311-207-8. Third Party Claims Apportionment.

To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(5)(a), yet promptly authorize the payment of third party claims prior to a determination that corrective action has been properly performed and completed, the Executive Secretary may utilize budget projections to allocate coverage available for the payment of third party claims. The Executive Secretary may amend budget projections as frequently as he deems appropriate. Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the state risk manager has approved the settlement. Apportionment and priority shall be based upon the order in which an approved and agreed upon claim is received by the Executive Secretary.

KEY: financial responsibility, petroleum, underground storage tanks

~~[2002]~~ **2003**

Notice of Continuation March 6, 2002

19-6-105

19-6-419



End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Administrative Services, Administration

R13-3

Americans with Disabilities Act Grievance Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25772
FILED: 12/11/2002, 13:43

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is made under authority of Subsections 63A-1-110(2) and 63-46a-3(3). As required by 28 CFR 35.107, the Utah Department of Administrative Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act (ADA) of 1990 42 U.S.C. 12201 and 28 CFR Part 35.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to provide for the prompt and equitable resolution of complaints alleging any action prohibited by the ADA and related federal regulations.

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

ADMINISTRATIVE SERVICES
ADMINISTRATION
Room 3120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Camille Anthony, Executive Director

EFFECTIVE: 12/26/2002

Administrative Services, Information Technology Services

R29-2

Telecommunications Services and Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25790
FILED: 12/12/2002, 16:04

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 63A-6-106 permits state agencies and institutions of higher education to subscribe to telecommunication services provided by the Division of Information Technology Services (ITS). Section 63-46a-3 requires a state agency to write rules when its actions: "(a) authorizes, requires, or prohibits an action; (b) provides or prohibits a material benefit; (c) applies to a class

of persons or another agency; and (d) is explicitly or implicitly authorized by statute." This rule specifies standards and procedures that ITS and these other entities must follow.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rules R29-2 helps facilitate communication between ITS and other state entities with regard to telecommunication services and requirements. It also facilitates ITS's coordination efforts so that the interests of state government may be served and should be continued.

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

ADMINISTRATIVE SERVICES
 INFORMATION TECHNOLOGY SERVICES
 Room 6000 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Chris Heim at the above address, by phone at 801-538-3535, by FAX at 801-538-3622, or by Internet E-mail at cheim@utah.gov

AUTHORIZED BY: Steve Fulling, Director

EFFECTIVE: 12/26/2002



Auditor, Administration
R123-3
 State Auditor Adjudicative Proceedings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25765
 FILED: 12/10/2002, 11:08

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsections 63-46a-3(2), and 67-3-1(j), (m) and (n), and Section 67-3-3, which all allow the state auditor, under certain circumstances, to suspend disbursement of funds to state employees, state taxing units, counties, and others receiving public funds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS

SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rights of individuals potentially being affected, the rule ensures that due process is provided and should be continued.

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

AUDITOR
 ADMINISTRATION
 Room 211 STATE CAPITOL
 350 N STATE ST
 SALT LAKE CITY UT 84114-1103, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Betsy Ross at the above address, by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Betsy Ross, Director

EFFECTIVE: 12/26/2002



Auditor, Administration
R123-4
 Public Petitions for Declaratory Orders

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25768
 FILED: 12/10/2002, 11:48

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Section 63-46b-21 for public petition of the agency for consideration of the applicability of agency statutes, rules and orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by statute to ensure that agency statutes with potential effect on members of the public will be employed with the proper consideration for due process rights and should be continued.

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

AUDITOR
ADMINISTRATION
Room 211 STATE CAPITOL
350 N STATE ST
SALT LAKE CITY UT 84114-1103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Betsy Ross at the above address, by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Betsy Ross, Director

EFFECTIVE: 12/26/2002

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

AUDITOR
ADMINISTRATION
Room 211 STATE CAPITOL
350 N STATE ST
SALT LAKE CITY UT 84114-1103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Betsy Ross at the above address, by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Betsy Ross, Director

EFFECTIVE: 12/26/2002

Auditor, Administration **R123-5**

Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25767
FILED: 12/10/2002, 11:36

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: As required by Section 51-2-3.5, this rule provides the guidelines, qualifications criteria, and procurement procedures for audits required to be made by Section 51-2-1.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to provide the optimum guidance for political subdivisions in their audit procurement process, is required explicitly by statute, and should be continued.

Commerce, Securities **R164-1** Fraudulent Practices

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25830
FILED: 12/16/2002, 18:12

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 61-1-1(3) states that it is unlawful for any person to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Subsection 61-1-24(1)(a) allows the Division to make rules necessary to carry out the provisions of the chapter. Rule R164-1 helps to clarify Subsection 61-1-1(3) by identifying some acts and practices that are deemed fraudulent.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule assists the public in interpreting "act, practice, or course of business which operates or would operate as a fraud or deceit upon any person" and should be continued. The list is not all-inclusive, but gives individuals some guidelines in determining whether their acts and practices are fraudulent in nature.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/26/2002

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Health, Health Systems Improvement, Licensing **R432-500** Freestanding Ambulatory Surgical Center Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25729
FILED: 12/03/2002, 10:59

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, creates the Health Facility Licensing and Inspection Act. Section 26-21-5 requires the health facility committee to make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the licensing of health-care facilities. Section 26-21-6 requires that the department enforce rules, conduct inspections of health-care facilities, collect information authorized by the committee that may be necessary to ensure that adequate health-care facilities are available to the public, establish reasonable standards for criminal background checks by public and private entities, collect and credit fees for licenses, and make rules as necessary to implement the provisions of Title 26, Chapter 21, except as authority is specifically delegated to the committee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the last five-year review on December 8, 1997, the rule has been amended three times with the last effective date of January 14, 2002. Ninety-eight written responses opposing and supporting the 2001 rule amendment were received in the public comment period and in a public hearing was held April 24, 2001. Controversy centered on whether a Certified Registered

Nurse Anesthetist had to be directly supervised by a physician. The rule became effective August 13, 2001. A meeting was convened November 18, 2001, with members of the Utah Association of Nurse Anesthetists to further clarify the definition of a "physician" to include Medical Doctors, Doctors of Osteopathy, Oral Surgeons, Podiatrists, and Dentists and to resolve the issue of direct supervision. The Department submitted a written clarification to the association December 18, 2001. The final amendment to resolve the controversy became effective January 14, 2002, and all associations concurred with the proposal and no written comments were received

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R432-500 establishes a minimum standard for the operation of a Freestanding Ambulatory Surgical Center. This rule sets a minimum standard to ensure that consumers are aware of the standard of care which is to be delivered in a free standing facility. Rule comments opposed to physician-supervision of a Certified Registered Nurse Anesthetist were reviewed by the Department and the Department clarified that "physician" included M.D.'s, D.O.'s, Oral Surgeons, Podiatrists, and Dentists to resolve the issue of direct supervision. The Health Facility Committee supports the continuation of the rule and will continue to review this rule as medical practice and standards of care change.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/26/2002

▼ ————— ▼

Health, Center for Health Data, Vital Records and Statistics **R436-6** Delayed Registration of Birth and Death

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25730
FILED: 12/03/2002, 11:02

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-15 permits petition for a court order establishing facts of birth or death in the case of an unregistered birth or death, following procedures specified in department 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: No written comments have been received after enactment of the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule must be continued because it specifies the procedures for a court ordered delayed registration of birth or death for a person having no other means to obtain a birth or death certificate.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barry Nangle at the above address, by phone at 801-538-6907, by FAX at 801-538-7012, or by Internet E-mail at bnangle@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/26/2002

**Health, Center for Health Data, Vital
Records and Statistics**

R436-11

Local Registrars

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25731
FILED: 12/03/2002, 11:04

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-3 authorizes the department to appoint local registrars and make rules describing their duties.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received after enactment of the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule must be continued because it describes the duties and the remuneration rate of certain local offices.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barry Nangle at the above address, by phone at 801-538-6907, by FAX at 801-538-7012, or by Internet E-mail at bnangle@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/26/2002

**Human Services, Child and Family
Services**

R512-1

**Description of Division Services,
Eligibility, and Service Access**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25794
FILED: 12/13/2002, 09:39

**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: Pursuant to Sections 62A-4a-103 and 62A-4a-105, the Division is authorized to provide programs and services which support and preserve families and protect children.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to establish the foundation for Division services, eligibility, and service access.

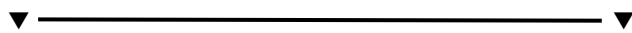
THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 12/26/2002



Human Services, Child and Family Services
R512-20
Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25793
FILED: 12/13/2002, 09:31

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Division is authorized by 45 CFR 234.60 and Subsection 62A-4a-105(9) to establish protective payees when consumers have demonstrated an inability to manage funds, have not used financial assistance in their best interest, or are physically or mentally incapable of expending their grant money in accordance with acceptable standards.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to assure that recipients of cash assistance from the Department of Workforce Service are used for the best

interest of the children and families receiving services from the Division when they demonstrate physical or mental incapacity or financial irresponsibility as evidenced through an evaluation by the Division worker.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 12/26/2002



Human Services, Child and Family Services
R512-31
Foster Parent Due Process

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25795
FILED: 12/13/2002, 09:47

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 62A-4a-206 mandates that the Division must observe due process when a child is removed from a foster home when the foster parent disagrees with the decision.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is consistent with Section 62A-4a-206 and the best interest of foster children to assure that changes in foster care placements are beneficial for the child so this rule should be continued.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 12/26/2002

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 12/26/2002

Human Services, Child and Family
Services
R512-32
Children with Reportable
Communicable Diseases

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25796
FILED: 12/13/2002, 09:55

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-6-3 requires agencies to report communicable diseases to the Utah Department of Health. Section 62A-4a-105 requires the Division to promote the laws of other state agencies that affect the welfare of children.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Because the Division has custody of children who may have communicable disease, this rule establishes the standards and procedures for reporting to the Utah Department of Health and should be continued.

Human Services, Child and Family
Services
R512-40
Adoptive Home Studies, Recruitment,
Approval

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25797
FILED: 12/13/2002, 10:06

**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: Pursuant to Sections 62A-4a-105 and 62A-4a-106, the Division is authorized to provide adoption services for children in the custody of the Division. This rule establishes standards for implementing this responsibility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Since the Division has the responsibility to provide adoption services for children in their custody, the Division must establish standards for adoptive studies, recruitment of adoptive parents, and approval of adoptive placements so this rule should be continued.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 12/26/2002



Human Services, Child and Family
Services
R512-42
Adoption by Relatives

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25798
FILED: 12/13/2002, 10:40

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-106 and 62A-4a-108 give the Division the responsibility to provide adoption services for children in the custody of the Division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because relatives are encouraged to consider adopting children who are kin. This rule implements the public policy on encouraging adopting by kin.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 12/26/2002



Human Services, Child and Family
Services
R512-50

Fee Collection for Clients Served by
Pre-School Day Treatment Contract

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25800
FILED: 12/13/2002, 11:06

**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 62A-1-111 authorizes the Divisions within the Department of Human Services to collect fees for its services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division provides, by contract, pre-school day care services for clients who are receiving voluntary or court ordered services. This rule establishes standards and procedures for collecting fees and should be continued.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 12/26/2002

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Human Services, Mental Health

R523-1

Policies and Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25773
FILED: 12/11/2002, 14:06

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 62A-15-105 grants the Board of Substance Abuse and Mental Health the authority to develop policies for mental health programs funded with state and federal monies and to ensure that the public has input into the policy-making procedures. Rule R523-1 sets forth the procedures for getting public input and reviewing board policies. Sections 17A-3-602 and 62A-15-103 grant the State Division of Substance Abuse and Mental Health and the Board the authority to establish rules for mental health programs funded with state and federal monies and establishes rules for the Request for Proposal (RFP) process, service contracts, requires an annual comprehensive plan of services and a mechanism to monitor the contracts. Section 17A-3-602 grants the Board of Substance Abuse and Mental Health the authority to establish a policy requiring a local match for state funds that are contracted to local authorities and that are used to provide mental health services. Also, to determine the array of services that are to be included in a comprehensive mental health plan. Section 17A-3-602 grants the Board of Substance Abuse and Mental Health the authority to set policy regarding mental health services funded by state and federal dollars. Section 62A-15-107 grants the Board of Substance Abuse and Mental Health the authority to establish a fee schedule for mental health services provided with state and federal dollars. Section 62A-15-107 grants the Board of Substance Abuse and Mental Health the authority to establish a fee schedule for mental health services provided with state and federal dollars. Section 62A-15-108 grants the Board of Substance Abuse and Mental Health the authority to establish a formula for allocation of state and federal funds to local mental health authorities and to use the determination of need as one of the relevant indicators for the distribution of funds. Section 17A-3-602 grants the Board of Substance Abuse and Mental Health the authority to set policy regarding mental health services funded by state and federal dollars including setting minimum standards in the annual comprehensive mental health services plan required by local authorities. Section 62A-15-103 grants the Board of Substance Abuse and Mental Health the authority to set policy regarding data collection, research and monitoring, and evaluation of programs provided by local mental health authorities. Section 62A-15-611 grants the Board of Substance Abuse and Mental Health the authority to

develop a formula for the allocation of adult beds at the Utah State Hospital for use by local mental health authorities. Section R523-1-10 sets the formulas for the allocation of the hospital beds. Section 62A-15-606 grants the Board of Substance Abuse and Mental Health the authority to make rules concerning admissions to the state hospital. This rule sets the criteria to be met before a person is placed in the state hospital and the process for discharge. It also sets the rules for emergency placements and transfers to and from the hospital. Sections 62A-15-105 and 17A-3-602 grants the Board of Substance Abuse and Mental Health the authority to establish rules that determine minimum standards for community mental health programs funded by state and federal dollars through a contract to local mental health authorities. Section R523-1-12 lists the minimum services that are to be included in a comprehensive mental health service plan and the mechanism for monitoring those services. Section 62A-15-105 grants the Board of Substance Abuse and Mental Health the authority to establish rules that set standards for community mental health centers. Section R523-1-13 sets the qualifications required to be a "Mental Health Officer". A mental health officer is a person who is designated to transport mentally-ill clients to a designated mental health facility. Section 62A-105 grants the Board of Substance Abuse and Mental Health the authority to establish rules for community mental health programs that are funded with state and federal and dollars that are contracted to local mental health authorities. Section R523-1-14 sets the qualifications for training and experience required to be a "Designated Examiner". A "Designated Examiner is a mental health professional who conducts a mental health examination and makes a recommendation to the court concerning involuntary commitment of a person. Section 62A-18-108 grants the Board of Substance Abuse and Mental Health the authority to establish by rule a funding formula for the allocation of state and federal funds to local mental health authorities. Section R523-1-15 sets the formula. Section 62A-15-612 grants the Board of Substance Abuse and Mental Health the authority to develop a formula for the allocation of pediatric beds at the state hospital for use by local mental health authorities. Section R523-1-16 sets the formula for the allocation of the hospital beds. Section 62A-15-704 grants the Board of Substance Abuse and Mental Health the authority to establish rules that provide a due process procedure for children or their parent, legal guardian, or legal custodian when the child is committed to a local mental health authority for treatment and who disagree with the administration of antipsychotic medication. Section 62A-15-704 grants the Board of Substance Abuse and Mental Health the authority to establish rules to provide due process procedures for children who are committed to local mental health authorities for treatment or their parents, legal guardian, or legal custodian when they disagree with that treatment.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Except for Section R523-1-19, no written comment or complaints have been received since the last five-year review of this rule. The State Division of Mental Health received public comment both for and against Section R523-1-19 when it was proposed in 1999.

There was no specific recommended changes requested but whether or not weapons should be banned. The Board felt strongly that the safety of both staff and clients at public mental health facilities would be enhanced with this rule and approved it. This rule was also presented to the legislature's Administrative Rules Review Committee who removed it from the list of rules to be sunset after the amendment was made.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued to ensure: that mental health services and state and federal funding continue to be provided in accordance with the intent of the Legislature; that appropriate monitoring of those services continue; that the public has input into board policy; that the comprehensive mental health plans consist of an appropriate array of services and that the array services are available in each community mental health center across the state; that mental health services continue to be provided in accordance with the intent of the Legislature; that fees that are assessed for services are consistent across the state; that consumers of mental health services have involvement in their treatment and a mechanism to register complaints; that state and federal funding is used for both the most effective and cost effective programs; that evaluation and research methods are consistent across the public mental health system; that local mental health authorities have equitable use of state hospital beds for those citizens in their areas who require inpatient treatment; that consumers committed into the public mental health system are appropriately referred to the state hospital and that there is consistent rules across all community mental health programs; that those who transport mentally ill clients to mental health facilities are qualified to do so; that those who conduct mental health examinations are qualified to do so and that qualifications are consistent across the state; that local mental health authorities have equitable use of state hospital beds for those children and youth in their area that require inpatient treatment; that children and youth who are committed to a local mental health authority for treatment or their parent, legal guardian, or legal custodian has a due process procedure in place to challenge that treatment; and that facilities are safe. Section R523-1-15 was reviewed and amended in June 2002. The Board held public meetings and the took considerable public input. The amended rule reflects those concerns such as using need, as well as population in the formula and requiring that the Board review the funding formula annually. Also, in July 2002, legislation was passed that combined the Divisions of Substance Abuse and Mental Health and merged the two policy boards. During the next year, the new board will review the rules in both the substance abuse and mental health sections of Administrative Rules and make any necessary changes. Any changes to the rules will require sufficient time for public comment as required by state statute (Section 62A-15-105). (DAR NOTE: H.B. 5008, merging the Divisions of Mental Health and Substance Abuse is found at UT L 2002, 5th Spec Sess Ch 8, and was effective September 8, 2002.)

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

HUMAN SERVICES
MENTAL HEALTH
120 N 200 W 4TH FL
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Janina Chilton at the above address, by phone at 801-538-4072, by FAX at 801-538-3993, or by Internet E-mail at jchilton@utah.gov

AUTHORIZED BY: Randall Bachman, Director

EFFECTIVE: 12/26/2002



Human Services, Recovery Services **R527-928** Lost Checks

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25735
FILED: 12/05/2002, 09:30

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 70A, Chapter 3, defines checks (negotiable instruments) including their negotiation, endorsement, enforcement, and liability. This rule clarifies acceptable identification and endorsement of department issued checks. The circumstances surrounding the cashing of a department check may create an overpayment situation. This rule establishes the responsibility for the investigation and collection of those overpayment checks as well as lost or stolen checks. Sections 35A-1-502, 62A-11-104, 62A-11-107, and 62A-11-201 delineate the duties of office, recovery of ineligible funds, administrative determination of overpayment, assistance fraud, and civil liability for overpayment for that investigation and collection.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the responsibility for investigation and collection, cashing, endorsement, and replacement of lost or stolen department checks remains clear.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 RECOVERY SERVICES
 515 E 100 S
 SALT LAKE CITY UT 84102-4211, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Laurie Wittwer at the above address, by phone at 801-536-8947, by FAX at 801-536-8509, or by Internet E-mail at lwittwer@utah.gov

AUTHORIZED BY: Emma Chacon, Director

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
 Board
R641-100
 General Provisions

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 25741
 FILED: 12/09/2002, 09:29

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative 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: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 OIL, GAS AND MINING BOARD
 Room 1210
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
 Board
R641-101
 Parties

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 25742
 FILED: 12/09/2002, 09:31

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative 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: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

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

NATURAL RESOURCES
OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board
R641-102
Appearances and Representations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25743
FILED: 12/09/2002, 09:32

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative 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: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

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

NATURAL RESOURCES
OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board
R641-103
Intervention

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25755
FILED: 12/09/2002, 09:46

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative 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: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

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

NATURAL RESOURCES
OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board
R641-104
Pleadings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25745
FILED: 12/09/2002, 09:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative 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: No comments have been received from persons supporting or opposing the rule. Comments have been received from legal practitioners with suggestions for changes. These suggestions are currently under consideration for rule amendments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

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

NATURAL RESOURCES
OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board
R641-105
Filing and Service

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25746
FILED: 12/09/2002, 09:37

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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NATURAL RESOURCES
OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-106
Notice and Service

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25747
FILED: 12/09/2002, 09:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-107
Prehearing Conference

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25748
FILED: 12/09/2002, 09:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-108
Conduct of Hearings

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25749
FILED: 12/09/2002, 09:40

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-109
Decisions and Orders

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25759
FILED: 12/09/2002, 10:14

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative 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: No comments have been received from persons supporting or opposing the rule.

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
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DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-110
Rehearing and Modification of Existing
Orders

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25750
FILED: 12/09/2002, 09:41

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-111
Declaratory Rulings

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25762
FILED: 12/09/2002, 14:15

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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Room 1210
1594 W NORTH TEMPLE
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DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-112
Rulemaking

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25751
FILED: 12/09/2002, 09:43

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
Board
R641-113
Hearing Examiners

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25752
FILED: 12/09/2002, 09:43

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board

R641-114

Exhaustion of Administrative Remedies

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25753
FILED: 12/09/2002, 09:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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NATURAL RESOURCES
OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board

R641-115

Deadline for Judicial Review

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25754
FILED: 12/09/2002, 09:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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NATURAL RESOURCES
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Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board
R641-116
Judicial Review of Formal Adjudicative Proceedings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25756
FILED: 12/09/2002, 09:46

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining Board
R641-117
Civil Enforcement

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25757
FILED: 12/09/2002, 09:47

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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NATURAL RESOURCES
 OIL, GAS AND MINING BOARD
 Room 1210
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
 Board
R641-118
 Waivers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE No.: 25760
 FILED: 12/09/2002, 10:15

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative rules.

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 SALT LAKE CITY UT 84116-3154, or
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 Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002



Natural Resources; Oil, Gas and Mining
 Board
R641-119
 Severability

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE No.: 25758
 FILED: 12/09/2002, 09:48

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 40-6-5 (Oil and Gas Conservation), 40-8-6 (Minerals Reclamation), and 40-10-6 (Coal Reclamation). Under each of these programs, administered by the Division and Board of Oil, Gas and Mining, authorization is given to engage in adopting and administering administrative 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: No comments have been received from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued so that the existing rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place.

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

NATURAL RESOURCES
OIL, GAS AND MINING BOARD
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@utah.gov

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/26/2002

▼ ————— ▼

Natural Resources, Water Resources **R653-2** Financial Assistance from the Board of Water Resources

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25801
FILED: 12/13/2002, 11:27

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 73, Chapter 10, provides revolving funds to give technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state. This rule establishes the criteria for the funding programs and revolving funds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Board of Water Resources continues to provide funding for water projects so this rule is constantly used, reviewed, and amended and should be continued.

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

NATURAL RESOURCES
WATER RESOURCES
Room 310
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nancyfullmer@utah.gov

AUTHORIZED BY: Larry Anderson, Director

EFFECTIVE: 12/26/2002

▼ ————— ▼

Natural Resources, Water Resources **R653-3** Selecting Private Consultants

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25802
FILED: 12/13/2002, 11:52

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule applies to the procurement of engineering services within the scope of the practice of professional engineering as defined in Section 58-22-102.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division of Water Resources is constantly selecting private consultants and therefore needs the criteria outlined in this rule.

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

NATURAL RESOURCES
WATER RESOURCES
Room 310
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nancyfullmer@utah.gov

AUTHORIZED BY: Larry Anderson, Director

EFFECTIVE: 12/26/2002



**Natural Resources, Water Resources
R653-4
Investigation Account**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25817
FILED: 12/16/2002, 14:08

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-10-8 established the Water Resources Investigation Account to provide moneys for special studies, investigations, engineering, inspections, and other expenses relating to the conservation and development of the waters of the state of Utah. This rules establishes the guidelines for use of the account.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Investigation Account is still in use and guidelines for its use are required so this rule should be continued.

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

NATURAL RESOURCES
WATER RESOURCES
Room 310
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nancyfullmer@utah.gov

AUTHORIZED BY: Larry Anderson, Director

EFFECTIVE: 12/26/2002



**Natural Resources, Water Resources
R653-5
Cloud Seeding**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25818
FILED: 12/16/2002, 14:21

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 73, Chapter 15, created the "Cloud Seeding to Increase Precipitation Act" and gave regulatory authority to the Division of Water Resources. This rule specifies the requirements for the Cloud Seeding program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Cloud Seeding program is still in effect and is regulated by the Division of Water Resources. Therefore, the requirements listed in this rule are crucial to operating the Cloud Seeding program and should be continued.

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

NATURAL RESOURCES
WATER RESOURCES
Room 310
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nancyfullmer@utah.gov

AUTHORIZED BY: Larry Anderson, Director

EFFECTIVE: 12/26/2002



Natural Resources, Water Resources
R653-6
 Privatization Projects

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 25820
 FILED: 12/16/2002, 14:33

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to establish a report form for the implementation of Section 73-10d-6 under the Utah Privatization Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The report form is still required under the Utah Privatization Act in Section 73-10d-6 so the rule should be continued.

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

NATURAL RESOURCES
 WATER RESOURCES
 Room 310
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nancyfullmer@utah.gov

AUTHORIZED BY: Larry Anderson, Director

EFFECTIVE: 12/26/2002



Public Service Commission,
 Administration
R746-100
 Practice and Procedure Governing
 Formal Hearings

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 25736
 FILED: 12/06/2002, 14:20

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Section 54-1-2.5 which establishes the requirements for Commission procedure in Title 54, Chapter 7.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 1999, changes to Rule R746-100 were made to remove material relating to motor carriers, over which the Commission no longer provided supervision; to provide information in pleadings to assist the Commission in managing its case load; to make stylistic changes and eliminate or modify provision to track actual practice and procedures participants have followed in Commission proceedings. In 2000: Section R746-100-3 was amended to permit the Division of Public Utilities to participate in consumer complaint proceedings as determined by the Division or as directed by the Commission. The amendment also required that a responsive pleading be filed in consumer complaint proceedings as in formal proceedings. No comments were received pertaining to this rule after the last Five-Year Review in 1997.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-100 is necessary. It establishes organized and efficient procedures and guidelines to be followed in Commission hearings and in filing pleadings and other documents. It ensures consistency in the format of information, making research more efficient and effective; and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/26/2002



Public Service Commission,
Administration
R746-101

Statement of Rule for the Filing and
Disposition of Petitions for Declaratory
Rulings

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25737
FILED: 12/06/2002, 14:25

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers. Subsection 63-46b-21(2) requires each agency to issue rules defining procedure for filing petitions for declaratory rulings

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-101 should be continued because it continues to be required by Subsection 63-46b-21(2). It identifies and sets forth the procedure for filing a Petition for Declaratory Ruling, the format of a petition, and the procedure of review and disposition of the petition. This rule makes it clear to the public what is expected from a petitioner and what they can expect from the Commission when they need an explanation of rights, status, interests or other legal relationships under a statute, rule or order.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at bstroud@utah.gov

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/26/2002

Public Service Commission,
Administration
R746-200

Residential Utility Service Rules

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 25738
FILED: 12/06/2002, 14:29

**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 54-4-1 authorizes the Commission to regulate every public utility in Utah and supervise the business of those public utilities necessary to accomplish that regulation and supervision. Section 54-4-7 requires that the Commission provide rules to ensure that utility service and equipment is just, safe, proper, and adequate. Section 54-7-25 provides for penalties referred to in Section R746-200-9.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 1999, changes included: 1) expansion of the lead sentence in Subsection R746-200-3(A)(2) to clarify that interest rates on security deposits shall be based on the tariffed rates established for each utility by the Commission; 2) in Subsection R746-200-3(C) wording was changed to require that service, when on a shared meter or appliance, be maintained in the property owner's or the property owner's agent's name so that the property owner and other tenant(s) would not be penalized (by termination of service) if another tenant failed to pay; and 3) in Subsection R746-200-6(G)(4) the first and third sentences were changed to require notification to occupants at a location in all situations, allowing occupants to arrange continuation of service without interruption. In 2000, an amendment was made to Sections R746-200-7 and R746-200-8 describing the informal review procedures to be followed by the complainant, the service provider and the Division of Public Utilities in attempting to resolve customer complaints. The amendment also made word changes for consistency in the informal review procedures specified in Rules 746-200 and 746-240. No comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Commission must continue to regulate every public utility in Utah and provide rules to ensure that utility service and equipment is just, safe, proper, and adequate. Rule R746-200 establishes and enforces utility residential service practices and procedures such as eligibility, deposits, account billing, deferred payment agreements, termination, review of consumer complaints and penalties and should be continued.

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

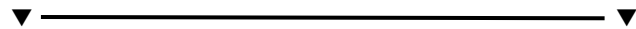
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/26/2002



**Public Service Commission,
Administration
R746-310
Uniform Rules Governing Electricity
Service by Electric Utilities**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25739
FILED: 12/06/2002, 14:32

**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 54-1-1 requires that the Commission exercise its rulemaking powers. Section 54-4-1 authorizes the Commission to regulate every public utility in Utah. Section 54-4-7 requires that the Commission provide rules to ensure that utility service and equipment is just, safe, proper, and adequate. Section 54-4-14 authorizes the Commission to promulgate rules to require utilities to conduct business in such a way as to safeguard the health and safety of its employees, customers and the public. Section 54-4-23 authorizes the Commission to prescribe a system of accounts to be kept by public utilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2000, an amendment was made to Subsection R746-310-8(B) changing the wording to improve communication to customers when a backbill adjustment is made to a customer's account. No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-310 establishes guidelines for customer relations; meters and meter testing;

station instruments, voltage and frequency restrictions; design, construction and operation of facilities; line extensions; accounting; billing adjustments; overbilling; and preservation of records. This rule is necessary because the Commission is required to regulate every public utility in Utah, including electric utilities, and to provide rules to ensure that utility service and equipment is just, safe, proper, and adequate and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/26/2002



**Public Service Commission,
Administration
R746-320
Uniform Rules Governing Natural Gas
Service**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 25740
FILED: 12/06/2002, 14:36

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers; Section 54-4-1 which gives the Commission the power and jurisdiction to regulate all public utilities in Utah; and Section 54-4-7 which requires that the Commission provide rules to ensure that utility service and equipment is just, safe, proper, and adequate. Section 54-4-14 authorizes the Commission to promulgate rules to require utilities to conduct business in such a way as to safeguard the health and safety of its employees, customers, and the public. Section 54-4-23 authorizes the Commission to prescribe a system of accounts to be kept by public utilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS

SUPPORTING OR OPPOSING THE RULE: In 1999, an amendment was made to remove definitions not used in the existing rule. Other changes added provisions that govern how and when billing adjustments may be made to correctly bill a customer for services actually consumed that differ from amounts reflected in past bills; both under- and over-usage. In 2000, wording in Subsection R746-320-8(B) was changed to improve communication to customers when a backbill adjustment is made to a customer's account. No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-320 should be continued because it establishes guidelines for methods and conditions of service for natural gas utilities such as: quality control of equipment, standards, records and reports; testing and location of meters; plant operation and construction; records; and accounting.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/26/2002



**Public Service Commission,
 Administration
 R746-343
 Rule for Deaf, Severely Hearing or
 Speech Impaired Person**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 25799
 FILED: 12/13/2002, 11:02

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-8b-10 which requires the Commission to exercise its rulemaking powers to establish a program to provide telephone service to certified deaf, severe hearing

impaired or speech impaired persons; to impose a surcharge on access lines to cover the cost of the program; and to administer the money collected.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2000, the surcharge in Section R746-343-15 was amended to reduce the amount from \$0.18 to \$0.10 because under the existing surcharge rate, the funding amounts collected exceeded expenditures incurred in the operation of the telephone relay services and program. The surcharge base had grown in different proportion to the change in expenditures. The rule change resulted in a reduction of approximately 40% in the surcharge rates paid to fund this statutorily mandated telephone relay program. No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it establishes eligibility requirements, and sets forth the procedure for approval of an application and the distribution process for telecommunications devices for the deaf (TDDs). This rule provides instructions for training, replacement of TDDs, ownership and liability, and out-of-state use. The rule also sets forth the liability of the telephone relay center and confidentiality and privacy requirements. Section R746-343-15 establishes the surcharge to be collected to cover the cost of the program as required by Subsection 54-8b-10(4). This rule is also necessary to comply with provisions in the Americans with Disabilities Act (ADA) and Federal Communication Commission (FCC) regulations.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/26/2002



**School and Institutional Trust Lands,
 Administration
 R850-70
 Sales of Forest Products From Trust
 Lands Administration Lands**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25734
FILED: 12/04/2002, 13:19

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Subsection 53C-1-302(1)(a)(ii) of the Utah Code Annotated authorize the Director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert plants, and other vegetative material from Trust lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without the authorization to issue forest products permits and timber contracts, the permanent funds of the schools and other institutions that benefit from the lands managed by this administration would forego the opportunity to receive revenues derived from said sales so this rule should be continued. This rule provides for the harvest of timber products that are required to ensure the continued operation of several locally based sawmills. This rule benefits not only the permanent funds of the beneficiaries, but the economies of rural Utah as well.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin S. Carter, Deputy Director

EFFECTIVE: 12/26/2002



Transportation, Operations,
Maintenance
R918-3
Snow Removal

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25803
FILED: 12/13/2002, 15:16

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule under the authority of Sections 72-1-201, 72-1-205, and 72-1-303 sets out the types of snow removal services that will be provided to different functional types of roads.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is helpful for the public to know how roads will be maintained during the winter season. This would help citizens to better plan for snow emergencies and give them a better idea of when and under what circumstances their roads will be plowed so this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 12/26/2002



Transportation, Operations, Traffic and
Safety
R920-3
Manual of Uniform Traffic Control
Devices, Part VI

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25804
FILED: 12/13/2002, 15:23

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 72-6-115 requires the department to adopt standards for highway construction and operation, including traffic control devices. In this rule, the department adopts part of the federal manual.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department is still required to adopt standards pursuant to state law and the federal manual is required for federal projects so this rule should be continued. Because of the need to adopt a uniform standard, the department has chosen to adopt the manual for state roads as well.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 12/26/2002



Transportation, Operations, Traffic and Safety
R920-5
Manual and Specifications on School Crossing Zones--Supplemental to Part VII of the Manual on Uniform Traffic Control Devices

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25806
FILED: 12/13/2002, 15:33

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-6-20 requires the department to adopt a manual and specifications for a uniform system of traffic control devices for school crossing guards in crossing zones.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: For the safety of people crossing roads to reach school, school personnel, especially crossing guards, must know of the correct manner in which to assist pedestrians. The rule does this by requiring school crossing plans, engineering studies, and signs and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 12/26/2002



Transportation, Operations, Traffic and Safety
R920-6
Snow Tire and Chain Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25807
FILED: 12/13/2002, 15:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-6-21 requires chains and snow tires on certain roads during the winter as

prescribed by department specifications and rules. This rule provides those specifications and informs the public of the equipment needed when chains and snow tires are used.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Setting standards for snow tires and chains further public safety and accomplish statutory directives so this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 12/26/2002



Transportation, Operations, Traffic and Safety

R920-50

Ropeway Operation Safety Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25808
FILED: 12/13/2002, 15:43

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 72-11-210 require departmental rulemaking to provide safety standards for ropeway operations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received; however, a few months ago, the department adopted the current version of the rule pursuant to the recommendations of government and industry officials.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is the result of several months of study and is believed to further the purpose of the ropeway act and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 12/26/2002



Transportation, Operations, Traffic and Safety

R920-51

Safety Regulations for Railroads

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 25809
FILED: 12/13/2002, 15:50

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The transportation code gives the department statewide policymaking and regulatory authority over all transportation systems in the state. However, state regulation over railroads is limited by federal law. This rule provides for the adoption of the relevant federal regulations, which govern state standards. Though the state is required to follow the federal regulations regardless of this rule, their publication in the administrative rules better informs the citizens of procedures and the place to go in the federal regulations for detailed guidance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Federal law still requires

adoption of their regulations because of the interstate character of railroad operations so this rule should be continued. Publication also still serves the purpose of providing notice of governing law.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 12/26/2002



Treasurer, Unclaimed Property
R966-1
Requirements for Claims where no
Proof of Stock Ownership Exists

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE NO.: 25733
FILED: 12/04/2002, 10:42

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The administrator is given responsibility to pay claims under Section 67-4a-501.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to make it clear to the public how to claim stock when certificates are lost and should be continued.

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

TREASURER
UNCLAIMED PROPERTY
Room 500
341 S MAIN ST
SALT LAKE CITY UT 84111-2726, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Betsy Ross at the above address, by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Betsy Ross, Director

EFFECTIVE: 12/26/2002



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing

No. 25441 (AMD): R156-11a. Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules.
Published: November 1, 2002
Effective: December 3, 2002

No. 25501 (AMD): R156-46b-402. Default Procedures.
Published: November 1, 2002
Effective: December 3, 2002

No. 25411 (AMD): R156-56. Utah Uniform Building Standard Act Rules.
Published: October 15, 2002
Effective: January 1, 2003

No. 25474 (AMD): R156-69. Dentist and Dental Hygienist Practice Act Rules.
Published: November 1, 2002
Effective: December 3, 2002

Environmental Quality

Air Quality

No. 25247 (AMD): R307-170. Continuous Emissions Monitoring Program.
Published: October 1, 2002
Effective: December 5, 2002

Drinking Water

No. 25485 (AMD): R309-100. Administration: Drinking Water Program.
Published: November 1, 2002
Effective: December 9, 2002

No. 25486 (AMD): R309-105. Administration: General Responsibilities of Public Water Systems.
Published: November 1, 2002
Effective: December 9, 2002

No. 25487 (AMD): R309-110. Administration: Definitions.
Published: November 1, 2002
Effective: December 9, 2002

No. 25488 (AMD): R309-200. Monitoring and Water Quality: Drinking Water Standards..
Published: November 1, 2002
Effective: December 9, 2002

No. 25489 (AMD): R309-205. Monitoring and Water Quality: Source Monitoring Requirements.
Published: November 1, 2002
Effective: December 9, 2002

No. 25490 (AMD): R309-210. Monitoring and Water Quality: Distribution System Monitoring Requirements.
Published: November 1, 2002
Effective: December 9, 2002

No. 25491 (AMD): R309-215. Monitoring and Water Quality: Treatment Plant Requirements.
Published: November 1, 2002
Effective: December 9, 2002

No. 25492 (AMD): R309-225. Monitoring and Water Quality: Consumer Confidence Reports.
Published: November 1, 2002
Effective: December 9, 2002

No. 25493 (AMD): R309-525. Facility Design and Operation: Conventional Surface Water Treatment.
Published: November 1, 2002
Effective: December 9, 2002

No. 25494 (AMD): R309-530. Facility Design and Operation: Alternative Surface Water Treatment.
Published: November 1, 2002
Effective: December 9, 2002

Governor

Planning and Budget, Chief Information Officer

No. 25186 (REP): R365-4. Information Technology Protection.
Published: September 15, 2002
Effective: December 16, 2002

Health

Health Systems Improvement, Emergency Medical Services

No. 25372 (AMD): R426-12. Emergency Medical Services Training and Certification Standards.
Published: October 15, 2002
Effective: December 10, 2002

NOTICES OF RULE EFFECTIVE DATES

Health Systems Improvement, Licensing

No. 25449 (AMD): R432-4. General Construction.
Published: November 1, 2002
Effective: December 10, 2002

No. 25445 (AMD): R432-7. Specialty Hospital -
Psychiatric Hospital Construction.
Published: November 1, 2002
Effective: December 10, 2002

No. 25447 (AMD): R432-8. Specialty Hospital - Chemical
Dependency/Substance Abuse Construction.
Published: November 1, 2002
Effective: December 10, 2002

No. 25444 (AMD): R432-9. Specialty Hospital -
Rehabilitation Construction Rule.
Published: November 1, 2002
Effective: December 10, 2002

No. 25450 (AMD): R432-10. Specialty Hospital - Chronic
Disease Construction.
Published: November 1, 2002
Effective: December 10, 2002

No. 25451 (AMD): R432-11. Orthopedic Hospital
Construction.
Published: November 1, 2002
Effective: December 10, 2002

No. 25442 (AMD): R432-12. Small Health Care Facility
(Four to Sixteen Beds) Construction Rule.
Published: November 1, 2002
Effective: December 10, 2002

No. 25446 (AMD): R432-16. Hospice Inpatient Facility
Construction.
Published: November 1, 2002
Effective: December 10, 2002

No. 25443 (AMD): R432-104. Specialty Hospital -
Chronic Disease.
Published: November 1, 2002
Effective: December 10, 2002

No. 25453 (AMD): R432-270. Assisted Living Facilities.
Published: November 1, 2002
Effective: December 10, 2002

Insurance

Administration

No. 25131 (CPR): R590-76. Health Maintenance
Organizations and Limited Health Plans.
Published: November 1, 2002
Effective: December 11, 2002

No. 25483 (REP): R590-165. Health Benefit Plans.
Published: November 1, 2002
Effective: December 6, 2002

Pardons (Board Of)

No. 25481 (AMD): R671-207. Mentally-Ill Offender
Custody Transfer.
Published: November 1, 2002
Effective: December 4, 2002

No. 25498 (REP): R671-208. Confirmation of
Psychological Evaluation and Alienist Reports.
Published: November 1, 2002
Effective: December 4, 2002

No. 25499 (REP): R671-307. Foreign Nationals and
Offenders with Detainers.
Published: November 1, 2002
Effective: December 4, 2002

No. 25497 (REP): R671-317. Interim Decisions.
Published: November 1, 2002
Effective: December 4, 2002

No. 25479 (AMD): R671-405. Parole Termination.
Published: November 1, 2002
Effective: December 4, 2002

Tax Commission

Auditing

No. 25466 (AMD): R865-9I-2. Determination of Utah
Resident and Military Personnel Pursuant to Utah Code
Ann. Section 59-10-103.
Published: November 1, 2002
Effective: December 9, 2002

Property Tax

No. 25500 (AMD): R884-24P-33. 2003 Personal
Property Valuation Guides and Schedules Pursuant to
Utah Code Ann. Section 59-2-301.
Published: November 1, 2002
Effective: December 9, 2002

No. 25465 (AMD): R884-24P-35. Annual Affidavit of
Exempt Use Pursuant to Utah Code Ann. Section 59-2-
1101.
Published: November 1, 2002
Effective: December 9, 2002

No. 25464 (AMD): R884-24P-52. Criteria for Determining
Primary Residence Pursuant to Utah Code Ann. Sections
59-2-102 and 59-2-103.
Published: November 1, 2002
Effective: December 9, 2002

No. 25496 (AMD): R884-24P-53. 2000 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

Published: November 1, 2002

Effective: December 9, 2002

No. 25408 (AMD): R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.

Published: October 15, 2002

Effective: December 9, 2002

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2002, including notices of effective date received through December 16, 2002, the effective dates of which are no later than January 1, 2003. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: Because of publication constraints, neither index is printed in this Bulletin.

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).
