

UTAH STATE BULLETIN

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for April 2012 - 1115 Primary Care Network Demonstration Waiver Amendment - Utah's Premium Partnership (UPP) for Health Insurance Program

Pursuant to H.B. 144 Third Substitute (2012 General Session), the Utah Department of Health is submitting an amendment to the waiver to raise the income limit from 150 % of the federal poverty level to 200 % of the federal poverty level for adults to participate in Utah's Premium Partnership for Health Insurance (UPP) program.

The proposed change is subject to Centers for Medicare and Medicaid Services (CMS) approval.

For questions regarding this notice, please contact Emma Chacon at 801-538-6577, or echacon@utah.gov.

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for May 2012 Medicaid Rate Changes

Effective May 1, 2012, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

Health Center for Health Data, Health Care Statistics

Public Notice on Extending the Public Comment for the Amendment on Rule R428-10 (DAR No.35870) Published in the March 1, 2012, Bulletin

Public notice is hereby given that comments on the proposed amendment to Rule R428-10, Health Data Authority Inpatient Reporting Rule (DAR No.35870), published in the March 1, 2012, Bulletin will be accepted until April 30, 2012, at 5:00 p.m.

Please direct questions and your comments about this rule to Keely Cofrin Allen by phone at 801-538-6551, by FAX at 801-538-9916, or by Internet E-mail at kcofrinallen@utah.gov; or Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov.

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 March 16, 2012, 12:00 a.m., and April 02, 2012, 11:59 p.m. are included in this, the April 15, 2012 issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least May 15, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through August 13, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

**Administrative Services, Facilities
Construction and Management
R23-1-40
Procurement of Construction**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36020

FILED: 04/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for the procurement of construction by the Division. The Division is changing the amount of \$50,000 to \$100,000 for bonding and bid security requirements for the award of construction contracts by the Division. The reason for the amount change is due to inflation and changed market conditions.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures for the procurement of construction by the Division. The Division is changing the amount of \$50,000 to \$100,000 for bonding and bid security requirements for the award of construction contracts by the Division. The reason for the amount change is due to inflation and changed market conditions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-208

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This change will have no impact on the state budget, if anything there will be a cost savings. Cost for bonds that are no longer required for projects between \$50,000 and \$100,000 will no longer passed onto the state.

◆ **LOCAL GOVERNMENTS:** This rule does not apply to local governments.

◆ **SMALL BUSINESSES:** This rule change will save costs for small businesses. Cost for bonds that are no longer required for projects between \$50,000 and \$100,000 will no longer passed onto the state.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only results in savings to businesses dealing with the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no added compliance costs, however there is a savings for projects between \$50,000 and \$100,000. The Division no longer requires bonds for firms bidding on projects for \$50,000 to \$100,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

This rule is being changed to reflect inflation and changed market conditions. While some local companies may lose some business, many small businesses and taxpayers will save money as bonds will not be required for payments between \$50,000 and \$100,000.

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 STATE ST
SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov

◆ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

◆ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement of Construction.

R23-1-40. Acceptable Bid Security; Performance and Payment Bonds.

(1) Application. This section shall govern bonding and bid security requirements for the award of construction contracts by the Division in excess of [~~\$50,000~~]**\$100,000**; although the Division may require acceptable bid security and performance and payment bonds on smaller contracts. Bidding Documents shall state whether acceptable bid security, performance bonds or payment bonds are required.

(2) Acceptable Bid Security.

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

(b) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(i)(A) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5); and

(B) the contractor provides acceptable bid security by the close of business of the next succeeding business day after the Division notified the contractor of the defective bid security; or

(ii) only one bid is received.

(3) Payment and Performance Bonds. Payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of [~~\$50,000~~]\$100,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection (5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division.

(5) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The Director may waive the bonding requirement if the Director finds, in writing, that bonds cannot be reasonably obtained for the work involved.

KEY: contracts, public buildings, procurement
Date of Enactment or Last Substantive Amendment: [~~July 8, 2010~~]2012
Notice of Continuation: May 24, 2007
Authorizing, and Implemented or Interpreted Law: 63G-6-101 et seq.

Administrative Services, Finance
R25-20
Indigent Defense Funds Board,
Procedures for Electronic Meetings

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 35975
 FILED: 03/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule is to establish procedures for conducting electronic meetings for the Indigent Defense Funds Board.

SUMMARY OF THE RULE OR CHANGE: The rule establishes procedures by which the Board members may participate in electronic meetings including requirements regarding the posting of the agenda for the meeting, establishment of the anchor location, and methods by which participation can occur.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207 and Section 63G-3-201 and Section 77-32-402

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be some cost with providing the phone bridge. The cost for the phone bridge should be less than the amount for mileage reimbursements for board members.

◆ **LOCAL GOVERNMENTS:** No cost because the infrastructure to participate already exists. There may be some savings because people will no longer be required to physically attend.

◆ **SMALL BUSINESSES:** No cost because the infrastructure to participate already exists. There may be some savings because board members will no longer be required to physically attend.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost because the infrastructure to participate already exists. There may be some savings because board members will no longer be required to physically attend.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule imposes no requirements on affected persons. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business. Possible minimal savings for board members who will no longer have to physically attend board meetings.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 FINANCE
 ROOM 2110 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Barbara Sutherland by phone at 801-538-3020, by FAX at 801-538-3244, or by Internet E-mail at bsutherland@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

R25-20. Indigent Defense Funds Board, Procedures for Electronic Meetings.

R25-20-1. Purpose and Authority.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting Indigent Defense Funds Board meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-207, 63G-3-201, and 77-32-402.

R25-20-2. Meeting Procedure.

(1) The following provisions govern any meeting at which one or more board members appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the board may participate in any meeting electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notices shall specify the anchor location where the members of the board who are not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) In accordance with Utah Code Section 52-4-202 and Section 52-4-207, notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided at least 24 hours before the meetings on the Public Notice Website and to at least one newspaper of general circulation within the state or to a local media correspondent.

(c) Notice of the possibility of an electronic meeting shall be given to the board members at least 24 hours before the meeting. In addition, the notice shall describe how a board member may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a board member(s) appearing electronically or telephonically, any member(s) may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board. At the commencement of the meeting, or at such time as any member initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the Division of Finance, 2110 State Office Building, 450 North State Street, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings, Indigent Defense Fund Board
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 52-4-207;
63G-3-201; 77-32-402

Governor, Planning and Budget,
 Inspector General of Medicaid Services
 (Office of)
R367-1-15
 Administrative Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35958

FILED: 03/20/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After internal review of Section R367-1-15, the Office of Inspector General (OIG) has determined that an alternative method for creating an appeals process is more efficient and beneficial to all parties.

SUMMARY OF THE RULE OR CHANGE: The Administrative hearing process will be removed from Section R367-1-15.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63J, Chapter 4a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment will not impact or affect the state budget. The appeals processes will still occur through an alternative avenue; not administrative rulemaking. As this is an amendment to a current proposed rule; the status quo of cost to that rule is not changed or affected by this modification.

◆ **LOCAL GOVERNMENTS:** This amendment will not impact or affect local government. The appeals processes will still occur through an alternative avenue; not administrative rulemaking. As this is an amendment to a current proposed rule; the status quo of cost to that rule is not changed or affected by this modification.

◆ **SMALL BUSINESSES:** This amendment will not impact or affect small businesses. The appeals processes will still occur through an alternative avenue; not administrative rulemaking. As this is an amendment to a current proposed rule; the status quo of cost to that rule is not changed or affected by this modification.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment will not impact or affect persons other than small businesses, businesses, or local government entities.

The appeals processes will still occur through an alternative avenue; not administrative rulemaking. As this is an amendment to a current proposed rule; the status quo of cost to that rule is not changed or affected by this modification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment to Rule R367-1 does not create new compliance costs for any local government or business. There are no regulatory mandates created by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no additional cost to any entity because of this amendment. This is an amendment to a current proposed rule (R367-1); the cost to the status quo of the proposed rule (R367-1) is not changed or affected by this modification.

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

GOVERNOR
 PLANNING AND BUDGET,
 INSPECTOR GENERAL OF MEDICAID SERVICES
 (OFFICE OF)
 288 N 1460 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Green by phone at 801-538-6123, by FAX at 801-538-6382, or by Internet E-mail at mkgreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Michael Green, Policy and Training Coordinator

R367. Governor, Planning and Budget, Inspector General of Medicaid Services (Office of).

R367-1. Office of Inspector General of Medicaid Services.

[R367-1-15. Administrative Hearings.

- (1) Introduction and Authority:
 - (a) This rule sets forth the administrative hearing procedures for the Office.
 - (b) This rule is authorized by Section 26-1-24, Section 63G-4-102, 42 USC 1396a(a)(3), and 42 CFR 431, Subpart E.
- (2) Definitions:
 - (a) "Action" means a reduction, denial or revocation of reimbursement for services for a provider or any other action by the Office that affects the legal rights of a person or group of persons; but not including rules made under the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.
 - (b) "Administrative Law Judge" or ALJ means the person appointed to conduct an adjudicatory proceeding.

- (c) "Ex Parte Communication" means direct or indirect communication in connection with an issue of fact or law between the ALJ and one party only.
- (d) A "Medical Record" is a record that contains medical data of a client.
- (e) "Order" means a ruling by an ALJ that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.
- (f) "Petitioner" means any group or individual who is adversely affected by any action or inaction of the Office.
- (3) Computation of time: Unless otherwise provided in a specific section of these rules, time shall be computed in accordance with the Utah Rules of Civil Procedure.
- (4) Request for Hearing:
 - (a) Petitioner may file a written request for agency action pursuant to Section 63G-4-201, and in accordance with this rule. If a medical issue is in dispute, each request should include supporting medical documentation. The Office will schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.
 - (b) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its intended action.
 - (c) Failure to submit a timely request for a hearing constitutes a waiver of a Petitioner's due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must then mail or fax the form to the address or fax number contained on the notice of agency action.
 - (d) The Office considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through competent evidence that it was mailed before the date of receipt.
 - (5) Designation of Proceedings as Formal or Informal:
 - (a) A formal hearing will be set if the adverse action seeks reimbursement or other monetary sanctions in an amount of \$100,000 or above. Formal hearings will be conducted as formal adjudicative proceedings in accordance with the Utah Administrative Procedure Act, Utah Code 63G-4-202, 204 through 209, 302, 401, 403, 405, 501 and 502.
 - (b) An informal hearing will be set if the adverse action seeks reimbursement or other monetary sanctions in an amount less than \$100,000. Informal hearings will be conducted in accordance with the Utah Administrative Procedure Act, Utah Code 63G-4-202, 203, 209, 302, 401, 402, 405, 501, 502, 503, and 601.
 - (c) At any time before issuing a decision, the ALJ may convert an informal proceeding to a formal proceeding or a formal proceeding to an informal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.
 - (6) Service:
 - (a) The individual or party that files a document with the Office shall also serve the document upon all other named parties to the proceeding and file a proof of service with the Office that consists of a certificate, affidavit or acknowledgment of service.

~~(b) If the Office must provide notice of a formal hearing, the notice becomes effective on the date notification is sent.~~

~~(c) Section R367-1-14, Provider Communication, is incorporated under this sub-rule.~~

~~(7) Availability of Hearing:~~

~~(a) All requests for Hearings/Agency Action shall be set for an initial hearing in accordance with subsection 11.~~

~~(b) The Office will conduct an evidentiary hearing in connection with the agency action if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the ALJ may deny a request for an evidentiary hearing and issue a recommended decision without a hearing. There is no disputed issue of fact if the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.~~

~~(c) The Office may deny or dismiss a request for a hearing if the aggrieved person:~~

~~(i) withdraws the request in writing;~~

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

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

~~(iv) prolongs the hearing process without good cause;~~

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

~~(vi) does not respond to any correspondence from the ALJ or fails to provide medical records that the agency requests.~~

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

~~(8) Administrative Law Judge:~~

~~(a) The Inspector General shall appoint an impartial ALJ to conduct any hearing provided under these rules. Previous involvement in the initial determination of the action precludes an ALJ from appointment.~~

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

~~(i) restrict the person's participation in the hearing;~~

~~(ii) strike pleadings or evidence; or~~

~~(iii) issue an order of default.~~

~~(9) Modifying Requirements of Rules:~~

~~(a) Except as provided in this paragraph, the requirements of these rules may be modified by order of the ALJ for good cause.~~

~~(b) The requirements for timely filing a Request for Hearing under section (4) may not be modified.~~

~~(10) Ex Parte Communications:~~

~~(a) Ex parte communications are prohibited.~~

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

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

~~(11) The Informal Hearing:~~

~~(a) Unless otherwise provided in this section, informal hearings shall be conducted in accordance with Utah Code Section 63G-4-202 and 203.~~

~~(b) As set forth in subsection (7) all request for hearings/agency action shall be set for initial hearing within 30 days, only after at least 10-day notice of all parties.~~

~~(c) The Office shall notify the petitioner and Office representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the president officer for good cause shown. Failure by a petitioner to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.~~

~~(d) The party named in the notice of agency action and the Office shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply. The party that initiates the hearing process through a request for agency action has the burden of proof as the moving party. When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.~~

~~(e) Testimony may be taken under oath at the ALJ's discretion.~~

~~(f) All hearings are open to all parties.~~

~~(g) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.~~

~~(h) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the ALJ when requested by a petitioner or the Office, or may be issued by the ALJ on his/her own motion.~~

~~(i) A petitioner shall have access to relevant information contained in the Office's files and to material gathered in the investigation of petitioner to the extent permitted by law.~~

~~(j) The ALJ may cause an official record of the hearing to be made, at the Office's expense.~~

~~(k) Disposition of the ALJ's Order:~~

~~(i) Within a reasonable time after the close of the informal proceeding, the ALJ shall issue a signed order in writing that includes the following: the decision, the reasons for the decision, the Order, a notice of any right to administrative or judicial review of the order available to aggrieved parties and the time limits applicable to any reconsideration or review.~~

~~(ii) The order shall be based on the facts appearing in the Office's files and on the facts presented in evidence at the informal hearing.~~

~~(iii) A copy of the ALJ order shall be promptly mailed to each party.~~

~~(12) The Formal Hearing:~~

~~(a) The Office shall notify the parties of the date, time, and place of the hearing at least ten days in advance of the hearing. The ALJ's name, title, mailing address, and telephone number shall be provided to the parties. Failure to appear at the hearing after~~

~~notice has been given shall be grounds for default and shall waive both the petitioner's right to contest the allegations, and the petitioner's right to the hearing.~~

~~(b) The ALJ shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross examinations, and submit rebuttal evidence. The party that initiates the hearing process through a request for agency action has the burden of proof as the moving party. When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.~~

~~(c) Discovery~~

~~(i) the Utah Rules of Civil Procedure do not apply to formal adjudicative proceedings and formal discovery is permitted only as set forth in this section;~~

~~(ii) the scope of discovery in formal adjudicative proceedings, unless otherwise limited by order of the ALJ, is as follows:~~

~~(a) The Office may request copies of pertinent records. In the event the provider fails to produce the records within a reasonable time the Office may review all pertinent records in the custody of the provider during regular working hours after three days of written notice.~~

~~(b) The Office shall allow the aggrieved person or the person's representative to examine all Office documents and records upon written request to the Office at least 21 days before the hearing.~~

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

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

~~(e) The ALJ may order a medical assessment at the expense of the Office to obtain information. This information is subject to HIPAA confidentiality requirements and is part of the hearing record.~~

~~(f) The ALJ may set appropriate deadlines and page limits for any motions.~~

~~(g) The ALJ may require the filing of stipulations of facts, or pre-trial briefs, or pretrial disclosures.~~

~~(h) The ALJ may permit the parties to make oral arguments or submit additional briefs or memoranda after the close of the evidence.~~

~~(i) The ALJ may require each party to submit a post-hearing brief, and proposed findings of fact and conclusions of law.~~

~~(j) ALJs order shall comply with 63G-4-208.~~

~~(13) Declaratory Orders.~~

~~(a) Any person may file a request for Office action, requesting that the Office issue a declaratory order determine the applicability of a statute, rule, or order within the primary jurisdiction of the Office in accordance with 63G-4-503.~~

~~(b) Petition Form.~~

~~The petition shall:~~

~~(i) be clearly designated as a request for a declaratory order;~~

~~(ii) identify the statute, rule, or order to be reviewed;~~

~~(iii) describe the situation or circumstances giving rise to the need for the declaratory order or in which applicability of the statute, rule, or order is to be reviewed;~~

~~(iv) describe the reason or need for the applicability review;~~

~~(v) identify the person or agency directly affected by the statute, rule, or order;~~

~~(vi) include an address and telephone where the petitioner can be reached during regular work days; and~~

~~(vii) be signed by the petitioner.~~

~~(e) The provisions of Sections 63G-4-202 through 63G-4-302 apply to declaratory proceedings.~~

~~(d) The Office will not issue a declaratory order that deals with a question or request that the ALJ determines is:~~

~~(i) Not within the jurisdiction and competence of the Office;~~

~~(ii) trivial, irrelevant, or immaterial;~~

~~(iii) not one that is ripe or appropriate for determination;~~

~~(iv) currently pending or will be determined in an ongoing judicial proceeding;~~

~~(v) prohibited by state or federal law; or~~

~~(vi) challenge the validity of a federal statute or regulation.]~~

KEY: Inspector General, health, Medicaid fraud waste abuse
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, Implemented, or Interpreted Law: 63J-4a-101; 63J-4a-201; 63J-4a-602

**Health, Health Care Financing,
 Coverage and Reimbursement Policy**
R414-1-5
Incorporations by Reference

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 35994
 FILED: 03/29/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference and to implement by rule both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, and to implement by rule ongoing Medicaid policy for

services described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List; Hospital Services Provider Manual; Speech-Language Services Provider Manual; Audiology Services Provider Manual; Hospice Care Provider Manual; Long Term Care Services in Nursing Facilities Provider Manual; Personal Care Provider Manual; Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual; and Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to update the incorporation by reference date of the State Plan to 04/01/2012. It also incorporates by reference State Plan Amendments (SPAs) that become effective no later than 04/01/2012. SPAs for this incorporation of the State Plan include: SPA 11-005-UT Disproportionate Share Hospital Payments, which allows the State Hospital to receive direct disproportionate share payments at different intervals in a fiscal period based on the uncompensated care cost survey data that the hospital submits; SPA 11-006-UT Quality Improvement Incentive, which continues quality incentive programs for nursing facilities, updates the incentive period to be 07/01/2011 through 05/31/2012, and updates routine services to reflect daily rate and ancillary services; SPA 11-008-UT Outpatient Hospital Payments, which updates the State Plan to move to Medicare's reimbursement methodology for outpatient hospital services; SPA 11-010-UT Clarification of Peer Support Services, which clarifies that peer support services, when provided to children, are provided to the child's parents and legal guardians as appropriate to the child's age, clarifies that the services are directed exclusively to the treatment of the Medicaid-eligible child, and clarifies that provider qualifications include a parent of a child with serious emotional disturbance or an adult who has an ongoing and personal relationship with a family member with serious emotional disturbance; SPA 11-011 Tobacco Cessation Counseling Services for Pregnant Women, which specifies who can provide face-to-face tobacco cessation counseling services for pregnant women and specifies the limitations; and SPA 11-012-UT (companion to SPA 11-008-UT), which updates another section of the State Plan to move to Medicare's reimbursement methodology for outpatient hospital services. This rule change also incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective 04/01/2012; incorporates by reference both the definitions and the

attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective 04/01/2012; incorporates by reference the Speech-Language Services Provider Manual, effective 04/01/2012; incorporates by reference the Audiology Services Provider Manual, effective 04/01/2012; incorporates by reference the Hospice Care Provider Manual, effective 04/01/2012; incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective 04/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective 04/01/2012; incorporates by reference the Personal Care Provider Manual, with its attachments, effective 04/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective 04/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual, effective 04/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective 04/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective 04/01/2012; and incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, effective 04/01/2012.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Audiology Services Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Speech-Language Services Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012

- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Utah Medicaid Provider Manual, Medical Supplies Manual and List, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Utah Medicaid State Plan, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Hospice Care Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Hospital Services Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Definitions and the Attachment for the Private Duty Nursing Acuity Grid in the Home Health Agencies Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Personal Care Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 04/01/2012
- ◆ Updates Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 04/01/2012

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference.

Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to a single Medicaid recipient or provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of the State Plan by this rule assures that the Medicaid program is implemented through administrative rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective ~~January~~ April 1, 2012. It also incorporates by reference State Plan Amendments that become effective no later than ~~January~~ April 1, 2012.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, effective ~~January~~ April 1, 2012, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective [January]April 1, 2012.

(4) The Department incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective [January]April 1, 2012.

(5) The Department incorporates by reference the Speech-Language Services Provider Manual, effective [January]April 1, 2012.

(6) The Department incorporates by reference the Audiology Services Provider Manual, effective [January]April 1, 2012.

(7) The Department incorporates by reference the Hospice Care Provider Manual, effective [January]April 1, 2012.

(8) The Department incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective [January]April 1, 2012.

(9) The Department incorporates by reference the Personal Care Provider Manual, with its attachments, effective [January]April 1, 2012.

(10) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective [January]April 1, 2012.

(11) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective [January]April 1, 2012.

(12) The Department incorporates by reference the Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual, effective [January]April 1, 2012.

(13) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective [January]April 1, 2012.

(14) The Department incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective [January]April 1, 2012.

(15) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, effective [January]April 1, 2012.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [February 24], 2012

Notice of Continuation: March 2, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

Labor Commission, Boiler and Elevator Safety **R616-2-3** Safety Codes and Rules for Boilers and Pressure Vessels

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35963

FILED: 03/21/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments to Section R616-2-3 is to adopt recent revisions to boiler and pressure vessel standards established on a national basis by the American Society of Mechanical Engineers (ASME) and the National Board of Boiler and Pressure Vessel Inspectors (National Board).

SUMMARY OF THE RULE OR CHANGE: The amendments adopt by reference the 2011a addenda, issued July 1, 2011, to Sections I, IV and VIII of the ASME Boiler and Pressure Vessel Code (2010) and the National Board Inspection Code ANSI/NB-23 (2011), parts 1, 2 and 3, issued July 31, 2011. These addenda to the existing Boiler and Pressure Vessel Code make a small number of relatively minor editorial changes to reflect: 1) reformatting of the Code; and 2) renaming and placement of ASME's code symbol stamp on newly-constructed boilers and pressure vessels. The ASME addenda also adds a requirement for full radiography (non-destructive) testing on unfired steam boilers with design pressures not to exceed 50 psig.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds 2010 ASME Boiler & Pressure Vessel Code IV, published by American Society of Mechanical Engineers, 07/01/2011
- ◆ Updates 2011 NBIC National Board Inspection Code, Part I Installation, published by National Board of Boiler and Pressure Vessel Inspectors, 07/31/2011
- ◆ Updates 2011 NBIC National Board Inspection Code Part 2 Inspection, published by NBIC, 07/31/2011

- ◆ Updates 2011 NBIC National Board Inspection Code Part 3 Repairs and Alterations, published by NBIC, 07/31/2011
- ◆ Adds 2010 ASME Boiler & Pressure Vessel Code I, published by American Society of Mechanical Engineers, 07/01/2011
- ◆ Adds 2010 ASME Boiler & Pressure Vessel Code VIII, published by American Society of Mechanical Engineers, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments have no effect on the State's cost of enforcing boiler and pressure vessel engineering and safety standards. The amendments do not apply to existing boilers and pressure vessels and will have no fiscal impact on those existing installations. With respect to new boilers and pressure vessels installed in State buildings, the 2011a addenda make only minor editorial changes, while the updated ASME Code does not apply to the types of boiler installations that are used by the State. Consequently, the proposed amendments will not result in any cost or savings to the State.
- ◆ **LOCAL GOVERNMENTS:** The amendments do not apply to existing boilers and pressure vessels and will have no fiscal impact on those existing installations. With respect to new boilers and pressure vessels installed in local government buildings, the 2011a addenda make only minor editorial changes, while the updated ASME Code does not apply to the types of boiler installations that are used by local government. Consequently, the proposed amendments will not result in any cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments do not apply to existing boilers and pressure vessels and will have no fiscal impact on those existing installations. The 2011a addenda make only minor editorial changes, while the updated ASME Code does not apply to the types of boiler installations that are used by small businesses. Consequently, the proposed amendments will not result in any cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments do not apply to existing boilers and pressure vessels and will have no fiscal impact on those existing installations. With respect to new boilers and pressure vessels, the 2011a addenda make only minor editorial changes. The requirement in the updated ASME Code for full radiography (non-destructive) testing on unfired steam boilers with design pressures not to exceed 50 psig could affect power companies. However, the Labor Commission is unaware of these units being manufactured or used in Utah; for any units that are subject to the updated ASME Code, the cost is expected to be less than \$200.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Adoption of these amendments will likely result in no additional costs for Utah businesses. The only potential cost impact arises from the ASME Code's new requirement for enhanced testing on some types of boilers. That cost would be less than \$200 per unit. On the other hand, Utah

businesses will competitively benefit by maintaining uniformity between Utah's rules and national standards for boiler and pressure vessels. On balance, these competitive advantages will outweigh any potential costs from adopting the updated standards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The adoption of this code will have a minimal net fiscal impact on Utah businesses; however, adoption of the new codes is necessary to maintain conformity between Utah and national standards, thereby allowing Utah businesses to compete in national markets. Some large power companies may be affected by the ASME Codes new requirement for full radiography (non-destructive) testing on unfired steam boilers with design pressures not to exceed 50 psig; however, cost should not exceed \$200 per unit.

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

LABOR COMMISSION
BOILER AND ELEVATOR SAFETY
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:

- ◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov
- ◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-2. Boiler and Pressure Vessel Rules.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

- A. ASME Boiler and Pressure Vessel Code (2010).
 1. Section I Rules for Construction of Power Boilers published July 1, 2010, and the 2011a Addenda issued July 1, 2011.
 2. Section IV Rules for Construction of Heating Boilers published July 1, 2010, and the 2011a Addenda issued July 1, 2011.
 3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2010, and the 2011a Addenda issued July 1, 2011.
- B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (20[07]11) [~~issued December 31, 2007 and the 2008, 2009, and 2010 addenda~~] Parts 1, 2, and 3, issued July 31, 2011.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2007 Edition.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Ninth Edition, June 2006. Except:

1. Section-8, and
2. Appendix-A.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [~~August 22, 2011~~]**2012**

Notice of Continuation: October 5, 2011

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Labor Commission, Boiler and Elevator Safety **R616-2-15** Deputy Boiler/Pressure Vessel Inspectors

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35961

FILED: 03/21/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment to Section R616-2-15 clarifies that, in cases where the Chief Inspector has found a deputy inspector: a) is unqualified for continued appointment as a deputy inspector; b) has improperly conducted a boiler or pressure vessel inspection; and/or c) is subject to corrective action, the Division Director is required to hold a hearing only if the deputy inspector or the deputy inspector's sponsoring employer dispute the Chief Inspector's finding.

SUMMARY OF THE RULE OR CHANGE: Currently, Subsection R616-2-15(H) requires a hearing in every instance where the Chief Inspector has concluded a deputy inspector is unqualified, has violated inspection standards, or should be subjected to corrective action--even in those cases where the deputy inspector and sponsoring employer accept the Chief Inspector's findings. The proposed amendment modifies Subsection R616-2-15(H) to eliminate the requirement of a hearing in such cases, where there is no

dispute and the parties have accepted the Chief Inspector's findings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** By eliminating hearings in cases where there is no dispute, the Division may save costs of staff time that would otherwise be devoted to such hearings. These hearings are rare in any event and the Commission does not anticipate any appreciable costs or savings to the state budget by eliminating them.

♦ **LOCAL GOVERNMENTS:** Local governments do not employ deputy inspectors and are not otherwise affected by elimination of the hearing requirement in undisputed cases. Consequently, the Commission does not expect the amendment to result in any costs or savings for local governments.

♦ **SMALL BUSINESSES:** Small businesses do not employ deputy inspectors and are not otherwise affected by elimination of the hearing requirement in undisputed cases. Consequently, the Commission does not expect the amendment to result in any costs or savings for small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Eliminating hearings in cases where there is no dispute will save deputy inspectors and their sponsoring employers the costs associated with such hearings. However, because these hearings are rare, the Commission does not anticipate any appreciable costs or savings to the inspectors or their employers. The amendment will not have any fiscal impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment eliminates existing hearing requirements for cases where there is no dispute among the parties. Elimination of these unnecessary hearings will not impose any compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment conforms Subsection R616-2-15(H) to the Division's actual practice by eliminating language that suggests a hearing is required even in those cases where the parties have accepted the Chief Inspector's findings. To the extent that this minor change has any fiscal impact, it will be positive by eliminating costs that businesses might accrue in an unnecessary administrative hearing.

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

LABOR COMMISSION
BOILER AND ELEVATOR SAFETY
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:

◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov
 ◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.**R616-2. Boiler and Pressure Vessel Rules.****R616-2-15. Deputy Boiler/Pressure Vessel Inspectors.**

A. Purpose -- Section 34A-7-10 of the Safety Act ("the Act"; Title 34A, Chapter 7, Part One, Utah Code Annotated) permits the Division of Boiler, Elevator and Coal Mine Safety ("the Division") to authorize qualified individuals to inspect boilers and pressure vessels as "deputy inspectors." This rule sets forth the Division's procedures and standards for authorizing deputy inspectors, monitoring their performance, and suspending or revoking such authority when appropriate.

B. Initial appointment of deputy inspectors.

1. An applicant for initial Division authorization to inspect boilers and pressure vessels as a deputy inspector must satisfy the following requirements in the order listed below:

a. A company insuring boilers and pressure vessels in Utah ("sponsoring employer" hereafter) must submit a letter to the Division certifying that:

i. the applicant is employed by the sponsoring employer; and

ii. the sponsoring employer requests the Division authorize the applicant to inspect boilers and pressure vessels insured by that employer;

b. The applicant or sponsoring employer must submit to the Division a current, valid certification from the National Board of Boiler and Pressure Vessel Certification ("National Board") that the applicant is qualified to inspect boilers and pressure vessels;

c. The applicant or sponsoring employer must submit an application fee of \$25 to the Division;

d. The applicant must complete training for deputy inspectors provided by the Division;

e. The applicant must pass an oral examination administered by the Division pertaining to boiler and pressure vessel inspection standards and processes; and

f. The applicant must pass a written, closed-book examination administered by the Division on the Division's boiler/Pressure Vessel Compliance Manual, Rules, and codes adopted;

2. Upon successful completion of the foregoing requirements, the Division will appoint the applicant as a deputy inspector and will issue credentials to that effect. The Division will also notify the sponsoring employer of the appointment.

3. Initial appointment as a deputy inspector terminates at the end of the calendar year in which such appointment is made

unless a deputy inspector qualifies for reappointment under paragraph C of this rule.

C. Annual reappointment of deputy inspectors.

1. Effective January 1 of each year, the Division will renew the appointment of each deputy inspector for an additional year if the inspector satisfies the following requirements:

a. The individual was authorized to serve as a deputy inspector as of December 31 of the previous year;

b. A sponsoring employer has submitted a letter to the Division certifying that:

i. the individual is employed by the sponsoring employer; and

ii. The sponsoring employer requests the Division to reappoint that individual as a deputy inspector to inspect boilers and pressure vessels for that employer;

c. The individual or sponsoring employer has submitted to the Division a current, valid certification from the National Board establishing that the individual is qualified as a boiler and pressure vessel inspector;

d. The individual or sponsoring employer has submitted to the Division the required renewal fee of \$20;

e. The individual has completed the Division's required training for deputy inspectors.

2. An individual who does not meet each of the foregoing requirements is not eligible for reappointment as a deputy inspector and must instead meet each of the requirements for initial appointment under paragraph B of this rule.

D. Lapse, change of employment and loss of National Board certification.

1. Lapse. An individual's appointment as a deputy inspector will lapse if the individual:

a. Does not renew the appointment by satisfying the requirements of paragraph C of this rule;

b. Does not perform and submit to the Division at least one boiler or pressure vessel inspection during the previous calendar year; or

c. Fails to inform the Division of any change in status of employment with his or her sponsoring employer as required in the following paragraph D.2. of this rule.

2. Change in employment.

a. A deputy inspector must immediately notify the Division in writing of any change in the status of the inspector's employment with his or her sponsoring employer.

b. If the Division determines that an individual previously appointed as a deputy inspector is no longer employed by a company authorized to insure boilers and pressure vessels in Utah, the Division will immediately revoke that individual's appointment.

c. If the Division determines that a deputy inspector has changed employment to another company that insures boilers and pressure vessels in Utah, the Division will require the new employer or deputy inspector to submit the following:

i. A letter from the new employer:

AA. certifying that the individual is employed by that sponsoring employer; and

BB. requesting that the individual's appointment as a deputy inspector be continued;

ii. A current, valid certification as a boiler/pressure vessel inspector from the National Board; and

iii. Payment to the Division of the required fee of \$20.

3. National Board Certification.

a. Every deputy inspector shall at all times hold a current valid certification as a boiler/pressure vessel inspector from the National Board.

b. Each deputy inspector shall immediately notify the Division if his or her National Board certification has been revoked or suspended.

c. If the Division has reason to believe that a deputy inspector's National Board certification has been revoked or suspended, the Division will obtain written verification from the National Board. IF the National Board has in fact revoked or suspended the deputy inspector's certification, the Division will revoke the inspector's appointment as a deputy inspector.

E. Scope of authority. Appointment as a deputy inspector has the limited effect of authorizing the deputy inspector to inspect boilers and pressure vessels insured by his or her sponsoring employer for compliance with engineering codes and other standards adopted by the Division in Utah Administrative Code Rule R616-2. The Division expressly does not confer any other authority to deputy inspectors. Deputy inspectors remain employees of their respective sponsoring employers and are not employees of the Division or agents of the Division for any other purpose. A deputy inspector's right to inspect any particular boiler or pressure vessel, including the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located, is subject to the agreement between the sponsoring employers and the owner or operator of the boiler or pressure vessel. Appointment as a deputy inspector by the Division does not confer any right of entry independent from the terms of such agreement.

F. Inspection Standards

1. In inspecting any boiler or pressure vessel, a deputy inspector shall apply the standards and engineering codes adopted in Utah Administrative Code R616-2 - Boiler and Pressure Vessel Rules.

2. Each deputy inspector must use the Division's web-based applications to accurately record and submit all information regarding boilers and pressure vessels, including;

- a. inspection reports;
- b. scrapped and inactive items;
- c. information changes other than those requiring submission of a Change of Insurance Status Form (NB4); and
- d. a Web Issue Form (Form WIF-01) to identify any error or other issue resulting from the deputy inspector's use of the Division's web-based applications.

G. Quality Control. The Division will evaluate the performance of each deputy inspector to assure compliance with the Division's standards for boiler and pressure vessel inspections.

1. The Division's Business Analyst will review each inspection report submitted by a deputy inspector and will report any serious errors to the Chief Boiler and Pressure Vessel Inspector ("Chief Inspector") for appropriate action.

2. Each year, the Chief Inspector will evaluate a sample of each deputy inspector's inspections performed during that year for compliance with Division standards.

3. In addition to the reviews undertaken pursuant to paragraph G.2. of this rule, the Chief Inspector will also investigate any observation or report of an inspection deficiency to determine whether the deputy inspector complied with Division standards and rules in performing and reporting the inspection.

H. Corrective Action, Revocation and Right to Hearing.

1. If the Chief Inspector concludes that a deputy inspector does not satisfy requirements of this rule for continued appointment as a deputy inspector or has performed an inspection in a manner that is inconsistent with Division standards, the Chief Inspector will submit a written report and may[a] recommend[~~ation for~~] corrective action to the Division Director.

2. Depending on the circumstances and the seriousness of the situation, [~~the Chief Inspector may recommend~~]corrective action [~~that~~]may include[s];

- a. warning letter;
- b. requirements for additional training;
- c. requirements for retesting;
- d. request review by the National Board;
- e. additional supervision; and
- f. revocation of appointment as a deputy inspector.

3. The Division Director shall forward a copy of the Chief Inspector's written report and any recommendation for corrective action to the deputy inspector and the sponsoring employer. If the deputy inspector or sponsoring employer dispute the report or recommended corrective action, [~~F~~]the Division Director shall [~~also~~]schedule time and place to conduct a hearing on the matter, such hearing to be conducted as an informal adjudicative proceeding under the Utah Administrative Procedures Act. After conducting such hearing, the Division Director will issue a written decision setting forth the material facts and ordering appropriate corrective action, if any. The Division Director shall forward a copy of the decision to the deputy inspector, sponsoring employer, and the National Board.

4. If the deputy inspector or sponsoring employer is dissatisfied with the Division Director's decision, the inspector or sponsoring employer may seek judicial review as provided by the Utah Administrative Procedures Act.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [~~August 22, 2011~~]2012

Notice of Continuation: October 5, 2011

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Labor Commission, Boiler and Elevator Safety **R616-3-3** Safety Codes for Elevators

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35962

FILED: 03/21/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments to Section R616-3-3 is to adopt recent revisions to elevator engineering

and safety standards established on a national basis by the American Society of Mechanical Engineers (ASME).

SUMMARY OF THE RULE OR CHANGE: The amendments adopt by reference the: 1) 2010 edition of ASME A17.1, Safety Code for Elevators and Escalators; 2) 2009 edition of ASME A90.1, Safety Standard for Belt Manlifts; 3) 2008 ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts; and 4) 2007 edition of ANSI A10.4, Safety Requirement for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-101 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates ASME A18.1 Safety Standard for Platform Lifts and Stairway Chairlifts, published by American Society of Mechanical Engineers, 2008
- ◆ Updates ASME A90.1 Safety Standard for Belt Manlifts, published by American Society of Mechanical Engineers, 2009
- ◆ Updates ANSI/ASSE A10.4 Personnel Hoists and Employee Elevators on Construction and Demolition Sites, published by American National Standard, 2007
- ◆ Updates ASME A17.1 Safety Code for Elevators and Escalators, published by American Society of Mechanical Engineers, 2010

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments have no effect of the State's cost of enforcing elevator and escalator engineering and safety standards. The amendments do not apply to existing elevator and escalator installations and will have no fiscal impact on those existing installations. With respect to remodeling existing elevators/escalators or installing new elevators/escalators, the following costs and savings may apply depending on the nature of these installation: 1) new elevator technologies authorized by these amendments eliminate the requirement of a separate room or space for elevator equipment and controls in some applications, thereby reducing construction costs by approximately \$200,000 for a qualifying building; 2) use of LED lighting instead of incandescent bulbs in emergency and auxiliary lighting applications will cost approximately \$100 per unit, but the cost will be recovered from lower long-term costs for electricity and bulb replacement; and 3) standards to prevent hydraulic oil overheating, at a cost of \$500 per unit, will prevent rare but serious elevator safety hazards.

◆ **LOCAL GOVERNMENTS:** The amendments do not apply to existing elevator/escalator installations and will have no fiscal impact on those installations. With respect to remodeling existing elevators/escalators or installing new elevators/escalators, the following costs and savings may apply depending on the nature of the installation: 1) new elevator technologies authorized by these amendments eliminate the requirement of a separate room or space for elevator equipment and controls in some applications,

thereby reducing construction costs by approximately \$200,000 for a qualifying building; 2) use of LED lighting instead on incandescent bulbs in emergency and auxiliary lighting applications will cost approximately \$100 per unit, but that cost will be recovered from lower long-term costs for electricity and bulb replacement; 3) standards to prevent hydraulic oil overheating, at a cost of \$500 per unit, will prevent rare but serious elevator safety hazards; and 4) for some specialized escalator applications, such as airport walkways, the new standards allow variable-speed operation that will result in reduced maintenance and operation costs.

◆ **SMALL BUSINESSES:** The amendments do not apply to existing elevator and escalator installations and will have no fiscal impact on those installations. With respect to remodeling existing elevators/escalators or installing new elevators/escalators, the following costs and savings may apply depending on the nature of the installation: 1) new elevator technologies authorized by these amendments eliminate the requirement of a separate room or space for elevator equipment and controls in some applications, thereby reducing construction costs by approximately \$200,000 for a qualifying building; 2) use of LED lighting instead on incandescent bulbs in emergency and auxiliary lighting applications will cost approximately \$100 per unit, but that cost will be recovered from lower long-term costs for electricity and bulb replacement; and 3) standards to prevent hydraulic oil overheating, at a cost of \$500 per unit, will prevent rare but serious elevator safety hazards.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments do not apply to existing elevator and escalator installations and will have no fiscal impact on those installations. With respect to remodeling existing elevators/escalators or installing new elevators/escalators, the following costs and savings may apply depending on the nature of the installation: 1) new elevator technologies authorized by these amendments eliminate the requirement of a separate room or space for elevator equipment and controls in some applications, thereby reducing construction costs by approximately \$200,000 for a qualifying building; 2) use of LED lighting instead on incandescent bulbs in emergency and auxiliary lighting applications will cost approximately \$100 per unit, but that cost will be recovered from lower long-term costs for electricity and bulb replacement; and 3) standards to prevent hydraulic oil overheating, at a cost of \$500 per unit, will prevent rare but serious elevator safety hazards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments do not apply to existing elevator/escalator installations and will have no fiscal impact on those installations. With respect to remodeling existing elevators/escalators or installing new elevators/escalators, the engineering and safety features adopted by these amendments have previously been included in ASME standards that are followed by manufacturers nation-wide. Consequently, the features are already included in new elevators and escalators and the cost of the features is already incorporated in the price of the equipment. For that reason, Utah's adoption of the ASME standards will have no

actual effect on elevator and escalator equipment costs in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments bring Utah's rules for elevators and escalators into conformity with national standards. As already noted, elevator and escalator equipment is manufactured according to ASME standards and the cost of those standards is already included in the price of elevator and escalator equipment. Under these circumstances, the proposed amendments will not result in any actual additional costs for elevators or escalators in Utah. However, by adopting the ASME standards and maintaining conformity between Utah and national standards, elevator and escalator owners in Utah will avoid costs that might result if Utah's standards differed from national standards. Likewise, elevator and escalator owners will benefit from the reduced costs and increased safety made possible by the new technologies that are incorporated by the proposed amendments.

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

LABOR COMMISSION
BOILER AND ELEVATOR SAFETY
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:

◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov
◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-3. Elevator Rules.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1-2010/CSA B44-10, Safety Code for Elevators and Escalators, [2007 ed. issued April 6, 2007,] and amended as follows:

1. Delete 2.2.2.5;
2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided

with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler and Elevator Safety.

C. ASME A90.1-[1992]2009, Safety Standard for Belt Manlifts.

D. ANSI A10.4-[1990]2007, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 2006 International Building Code.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-[2005]2008 Safety Standard For Platform Lifts And Stairway Chairlifts[~~issued November 29, 2005~~].

H. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

KEY: elevators, certification, safety

Date of Enactment or Last Substantive Amendment: [November 22, 2010]2012

Notice of Continuation: October 5, 2011

Authorizing, and Implemented or Interpreted Law: 34A-1-101 et seq.

**Natural Resources; Oil, Gas and
Mining; Coal
R645-100-200
Definitions**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35995
FILED: 03/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides definitions of terms used in the Title R645 rules of the Coal Regulatory Program. Eight terms are being modified at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment includes changes to eight terms in the Coal Regulatory Program rules, in accordance with federal regulation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This amendment changes the definition of terms, which does not have a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because coal mining in Utah is not conducted by small business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment only modifies terms used in the Coal Regulatory Program rules, and does not have an anticipated cost or savings to persons other than small businesses, businesses, or local government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules. No compliance costs are expected from this rule amendment because it only modifies terms, in conjunction with federal regulations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
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:

- ◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 04/25/2012 09:00 AM, Sevier County Admin. Bldg, 250 N Main St, Richfield, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2012

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-100. Administrative: Introduction.

R645-100-200. Definitions.

As used in the R645 Rules, the following terms have the specified meanings:

"Abandoned site" means, for the purpose of R645-400, a coal mining and reclamation operation for which the Division has found in writing that,

(a) All coal mining and reclamation operations at the site have ceased;

(b) The Division has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(c) The Division:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to section 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2)(a) of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(d) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The Division has initiated and is diligently pursuing forfeiture of, or has forfeited any available performance bond.

(e) In lieu of the inspection frequency established in R645-400-130, the Division shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under part (e) of this definition, the Division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (2) below. Following the inspection and public notice, the Division shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to change into, imminent dangers to the health or safety of the public or significant environmental harms to land, air or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under part (e)(1) of this definition shall be provided as follows:

(i) The Division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

"Account" means the Abandoned Mine Reclamation Account established pursuant to Section 40-10-25 of the Act.

"Acid Drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned coal mining and reclamation operation, or from an area affected by coal mining and reclamation operations.

"Acid-Forming Materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Act" means Utah Code Annotated Section 40-10-1 et seq.

"Adjacent Area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations, including probable impacts from underground workings.

"Administratively Complete Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for

hauling coal to or from coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of "Affected area", insofar as it excludes roads which are included in the definition of "Surface coal mining operations", was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

"Agricultural Use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Alluvial Valley Floors" means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

"Applicant" means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant/Violator System" (AVS) means an automated information system of applicant, permittee, operator, violation and related data the Office maintains to assist in implementing the Federal Act.

"Application" means the documents and other information filed with the Division under the R645 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

"Approximate Original Contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles, and coal refuse piles having a design approved under the R645 Rules and prepared for abandonment. Permanent water impoundments may be permitted where the Division has determined that they comply with R645-301-413.100 through R645-301-413.334, R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-

533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, R645-302-270 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Arid and Semiarid Area" means, in the context of ALLUVIAL VALLEY FLOORS, an area where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields in Utah are in arid and semiarid areas.

"Auger Mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

"Best Technology Currently Available" means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetation selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with R645-301 and R645-302. Within the constraints of the State Program, the Division will have the discretion to determine the best technology currently available on a case-by-case basis, considering among other things the economic feasibility of the equipment, devices, systems, methods or techniques, as authorized by the Act and the R645 Rules.

"Blaster" means a person who is directly responsible for the use of explosives in connection with surface blasting operations incidental to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES or SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and who holds a valid certificate issued by the Division in accordance with the statutes and regulations administered by the Division governing training, examination, and certification of persons responsible for the use of explosives in connection with surface blasting operations incidental to coal mining and reclamation operations.

"Board" means the Board of Oil, Gas and Mining for the state of Utah, or the Board's delegated representative.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-95.

"Coal Exploration" means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning coal mining and reclamation operations under the requirements of the R645 Rules.

"Coal Mine Waste" means coal processing waste and underground development waste.

"Coal Mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 40-10-18 of the Act, surface coal mining and reclamation operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Coal Mining and Reclamation Operations Which Exist on the Date of Enactment" means all coal mining and reclamation operations which were being conducted on August 3, 1977.

"Coal Preparation or Coal Processing" means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal Processing Plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal Processing Waste" means earth materials which are separated from the product coal during cleaning, concentrating, or the processing or preparation of coal.

"Collateral Bond" means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of: (a) a cash account, which will be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Division upon demand, or the deposit of cash directly with the Division; (b)

negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Division; (c) negotiable certificates of deposit, made payable or assigned to the Division and placed in its possession, or held by a federally insured bank; (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable only to the Division upon presentation; (e) a perfected, first lien security interest in real property in favor of the Division; or (f) other investment grade rated securities having a rating of AAA or AA or A, or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.

"Combustible Material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or Institutional Building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions including, but not limited to educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles, and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and Accurate Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain all information required under the Act, the R645 Rules, and the State Program that is necessary to make a decision on permit issuance.

"Continuously Mined Areas" means land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date.

"Control or Controller" means:

(a) A permittee of a coal mining and reclamation operation;

(b) An operator of a coal mining and reclamation operation; or

(c) Any person who has the ability to determine the manner in which a coal mining and reclamation operation is conducted.

"Cooperative Agreement" means the agreement between the Governor of the State of Utah and the Secretary of the Department of the Interior as published at 30 CFR 944.30.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative Impact Area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining will include, at a minimum, the entire projected lives through bond releases of: (a) the proposed operation, (b) all existing operations, (c) any

operation for which a permit application has been submitted to the Division, and (d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Cumulative measurement period" means, for the purpose of R645-106, the period of time over which both cumulative production and cumulative revenue are measured.

(a) For purposes of determining the beginning of the cumulative measurement period, subject to Division approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(b) For annual reporting purposes pursuant to R645-106-900, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to July 1, 1992, June 30, 1992, and every June 30 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after July 1, 1992, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

"Cumulative production" means, for the purpose of R645-106, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by R645-106-700.

"Cumulative revenue" means, for the purpose of R645-106, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

"Current Assets" means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

"Current Liabilities" means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

"Direct Financial Interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining and reclamation operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director, Utah State Division of Oil, Gas and Mining, or the Director's representative.

"Director of the Office" means the Director of the Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior.

"Disturbed Area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal

waste is placed by coal mining and reclamation operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by R645-301-800 is released. For the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, disturbed area will not include those areas (a) in which the only coal mining and reclamation operations include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with R645-301 and R645-302; and (b) for which the upstream area is not otherwise disturbed by the operator.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Division" means Utah State Division of Oil, Gas and Mining, the designated state regulatory authority.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Edge Effect" means the positive effect created by the juxtaposition of two diverse habitats.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means any person employed by the Division who performs any function or duty under the Act, and does not mean the Board of Oil, Gas and Mining which is excluded from this definition.

"Ephemeral Stream" means a stream which flows only in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Essential Hydrologic Functions" means the role of an ALLUVIAL VALLEY FLOOR in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

"Excess Spoil" means spoil material disposed of in a location other than the mined-out area, provided that the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with R645-301-553.220 in nonsteep slope areas will not be considered excess spoil.

"Existing Structure" means a structure or facility used in connection with or to facilitate coal mining and reclamation operations for which construction began prior to January 21, 1981.

"Extraction of Coal as an Incidental Part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. For purposes of R645-102, only that coal extracted from within the right-of-way in the case of a road, railroad, utility line, or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction will be subject to the requirements of the Act and the R645 Rules.

"Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

"Federal Lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Fixed Assets" means plants and equipment, but does not include land or coal in place.

"Flood Irrigation" means, with respect to ALLUVIAL VALLEY FLOORS, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

"Fragile Lands" means, for the purposes of R645-103-300, geographic areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged or be destroyed by coal mining and reclamation operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality.

"Fugitive Dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or coal mining and reclamation operations, or both. During coal mining and reclamation operations, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Fund" means the Abandoned Mine Reclamation Account established pursuant to 40-10-25 of the Act.

"Government-Financed Construction" means, for the purposes of R645-102, construction funded 50 percent or more by funds appropriated from a government-financing agency's budget or obtained from general revenue bonds, but will not mean government-financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

"Government Financing Agency" means, for the purposes of R645-102 a federal, state, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

"Gravity Discharge" means, with respect to UNDERGROUND MINING AND RECLAMATION ACTIVITIES, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine, to the level of the discharge, is not gravity discharge.

"Ground Cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.

"Ground Water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Habitats of Unusually High Value for Fish and Wildlife" means an area defined by the state as crucial-critical use areas for wildlife.

"Half-Shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-Hollow Fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees, or the average slope of the profile of the hollow from the toe of the fill to the top of the fill, is greater than ten degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"Higher or Better Uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner, or the community, than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of surface coal mining and reclamation activities or for entry to underground mining activities.

"Highwall Remnant" means that portion of highwall that remains after backfilling and grading of a REMINING permit area.

"Historic Lands" means, for the purposes of R645-103-300, areas containing historic, cultural, and scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a Utah or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Historically Used for Cropland" means (a) lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conducting of coal mining and reclamation operations; (b) lands that the Division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Hydrologic Balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic Regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent Danger to the Health and Safety of the Public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before

the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding Structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid material.

"Impoundments" means all water, sediment, slurry, or other liquid or semiliquid holding structures, either naturally formed or artificially built.

"Indian Lands" means all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

"Indirect Financial Interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child(ren) and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining and reclamation operations in which the spouse, minor child(ren), or other resident relatives hold a financial interest.

"In-Situ Processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in-situ gasification, in-situ leaching, slurry mining, solution mining, borehole mining, and fluid-recovery mining.

"Intermittent Stream" means a stream, or reach of a stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

"Irreparable Damage to the Environment" means any damage to the environment in violation of the Act, the State Program, or the R645 Rules that cannot be corrected by actions of the applicant.

[~~_____ "Knowingly" means for the purposes of R645-402, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.~~

_____ "Knowing or Knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

"Land Use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another will be considered as a change to an alternative land use which is subject to approval by the Division.

CROPLAND - Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

DEVELOPED WATER RESOURCES - Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply.

FISH AND WILDLIFE HABITAT - Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

FORESTRY - Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

GRAZING LAND - Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

INDUSTRIAL/COMMERCIAL - Land used for (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products; this includes all heavy and light manufacturing facilities, or (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

PASTURE LAND OR LAND OCCASIONALLY CUT FOR HAY - Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

RECREATION - Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

RESIDENTIAL - Land used for single and multiple-family housing, mobile home parks, or other residential lodgings.

UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT - Land that is undeveloped or if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

"Material Damage" for the purposes of R645-301-525, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

"Materially Damage the Quantity or Quality of Water" means, with respect to ALLUVIAL VALLEY FLOORS, to degrade or reduce, by coal mining and reclamation operations, the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities.

"Mining" means, for the purposes of R645-400-351, (a) extracting coal from the earth or coal waste piles and transporting it within or from the permit area; and (b) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than a mine site.

"Mining area" means, for the purpose of R645-106, an individual excavation site or pit from which coal, other minerals and overburden are removed.

"Moist Bulk Density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees Celsius.

"NRCS" means Natural Resources Conservation Service, U.S. Department of Agriculture.

"MSHA" means the Mine Safety and Health Administration, U.S. Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

"Natural Hazard Lands" means, for the purposes of R645-103-300, geographic areas in which natural conditions exist which pose or, as a result of coal mining and reclamation operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Net Worth" means total assets minus total liabilities and is equivalent to owners' equity.

"Non-commercial Building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined at R645-100-200. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious Plants" means species that have been included on the official Utah list of noxious plants.

"Occupied Dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Occupied Residential Dwelling and Structures Related Thereto" means, for purposes of R645-301, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

"Office" means Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes, or intends to remove, more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other minerals" means, for the purpose of R645-106, any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

"Other Treatment Facilities" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized to prevent additional contribution of dissolved or suspended solids to stream flow or runoff outside the permit area or to comply with all applicable State and Federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

~~["Owned or controlled" and "owns or controls" means any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:~~

~~(a)(1) Being a permittee of a coal mining and reclamation operation;~~

~~(2) Based on the instrument of ownership or voting securities, owning of record in excess of 50 percent of an entity; or~~

~~(3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts coal mining and reclamation operations.~~

~~(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining and reclamation operation is conducted:~~

~~(1) Being an officer or director of an entity;~~

~~(2) Being the operator of a coal mining and reclamation operation;~~

~~(3) Having the ability to commit the financial or real property assets or working resources of an entity;~~

~~(4) Being a general partner in a partnership;~~

~~(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or~~

~~(6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts coal mining and reclamation operation.~~

]"Own, Owner, or Ownership" means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity, except when used in the context of ownership of real property.

"Parent Corporation" means corporation which owns or controls the applicant.

"Perennial Stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance Bond" means a surety bond, collateral bond, or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, the

R645 Rules, the State Program, and the requirements of the permit and reclamation plan.

"Performing Any Function or Duty Under This Act" means those decisions or actions, which if performed or not performed by a board member or employee, affect the State Program under the Act.

"Permanent Diversion" means a diversion remaining after coal mining and reclamation operations are completed which has been approved for retention by the Division and other appropriate state and federal agencies.

"Permanent Impoundment" means an impoundment which is approved by the Division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program. For purposes of the federal lands program, permit means a permit issued by the Division pursuant to the cooperative agreement with the Secretary.

"Permit Area" means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under R645-301-800, and which will include the area of land upon which the operator proposes to conduct coal mining and reclamation operations under the permit, including all disturbed areas, provided that areas adequately bonded under another valid permit may be excluded from the permit area.

"Permit Change" means any coal mining and reclamation operations not previously approved by the Division in the Permit or in any previously-approved permit change under R645-303-220.

"Permittee" means a person holding, or required by the Act or the R645 Rules to hold, a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program or, under the cooperative agreement pursuant to Section 523 of P.L. 95-87, by the Director of the Office and the Division.

"Person" means an individual, Indian tribe when conducting coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint-stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of federal, state, or local government including any publicly owned utility or publicly owned corporation of federal, state, or local governments.

"Person Having an Interest Which Is or May Be Adversely Affected or Person With a Valid Legal Interest" means any person (a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division, or the Board, or (b) whose property is or may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division or the Board.

"Precipitation Event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in the R645 Rules, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

"Previously Mined Area" means land affected by coal mining and reclamation operations prior to August 3, 1977, that has not been reclaimed to the standards of Ut. Admin. R645 or 30 CFR chapter VII.

"Prime Farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined herein.

"Principal Shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.

"Prohibited Financial Interest" means any direct or indirect financial interest in any coal mining and reclamation operation.

"Property to be Mined" means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

"Public Building" means any structure that is owned or leased and principally used by a government agency for public business or meetings.

"Public Office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public Park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public Road", for the purpose of part R645-103-200, R645-301-521.123, and R645-301-521.133 means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Publicly Owned Park" means a public park that is owned by a federal, state, or local governmental entity.

"Qualified Laboratory" means, for the purposes of R645-302-290, a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences, statement of results of test borings or core samplings under SOAP, or other services as specified at R645-302-299 and which meet the standards of R645-302-295.100.

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably Available Spoil" means spoil and suitable coal mine waste material generated by the re-mining activity or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use, and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge Capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by the R645 Rules to a postmining land use approved by the Division.

"Recurrence Interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in ten years.

"Reference Area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the Division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse Pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.

"Remining" means conducting coal mining and reclamation operations which affect previously mined areas.

"Renewable Resource Lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. For the purposes of R645-103, RENEWABLE RESOURCE LANDS means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Renewal of a Permit" means, for the purposes of R645-302-300, a decision by the Division to extend the time by which the permittee may complete mining within the boundaries of the original permit.

"Replacement of Water Supply" means, with respect to State-appropriated water supplies contaminated, diminished, or interrupted by coal mining and reclamation operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The

term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety Factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Department of Interior or his or her representative.

"Sedimentation Pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self Bond" means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor, and made payable to the Division with or without separate surety.

"Significant Forest Cover" means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture will decide on a case-by-case basis whether the forest cover is significant within those national forests in Utah.

"Significant, Imminent Environmental Harm to Land, Air, or Water Resources" means (a) the environmental harm has an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life; (b) an environmental harm is imminent, if a condition, practice, or violation exists which (i) is causing such harm, or (ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under 40-10-22 of the Act, and (c) an environmental harm is significant if that harm is appreciable and not immediately repairable.

"Significant Recreational, Timber, Economic, or Other Values Incompatible With Coal Mining and Reclamation Operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, coal mining and reclamation operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include (a) recreation, including hiking, boating, camping, skiing, or other related outdoor activities, (b) timber management and silviculture, (c) agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce, and (d) scenic, historic, archaeological, aesthetic, fish, wildlife, plants, or cultural interests.

"Siltation Structure" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, a sedimentation pond, a series of sedimentation ponds or other treatment facilities.

"Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

"SOAP" means Small Operator Assistance Program.

"Soil Horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four major soil horizons are"

A HORIZON - The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E HORIZON - The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B HORIZON - The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C HORIZON - The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil Survey" means a field and other investigations resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-314.100.

"Spoil" means overburden that has been removed during coal mining and reclamation operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Program" means the program established by the state of Utah and approved by the Secretary of the Department of the Interior pursuant to the Federal Act and the Act to regulate coal mining and reclamation operations on non-Indian and non-federal lands within Utah, according to the Federal Act, the Act and the R645 Rules. Pursuant to the cooperative agreement between the state of Utah and the Office, the State Program applies to federal lands in accordance with the terms of the cooperative agreement.

"Steep Slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Division after consideration of soil, climate, and other characteristics of a region or Utah.

"Subirrigation" means, with respect to ALLUVIAL VALLEY FLOORS, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

"Substantial Legal and Financial Commitments in a Coal Mining and Reclamation Operation" means, for the purposes of R645-103-300, significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in

place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially Disturb" means, for purposes of COAL EXPLORATION, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in Interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surety Bond" means an indemnity agreement in a sum certain payable to the Division, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Utah.

"Surface Operations and Impacts Incident to an Underground Coal Mine" means all operations involved in or related to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air, or water resources of the area including all activities listed in 40-10-3(20) of the Act and the definition of underground mining activities appearing herein.

"SURFACE COAL MINING AND RECLAMATION ACTIVITIES" means those coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Suspended Solids or Nonfilterable Residue, Expressed as Milligrams Per Liter" means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulation for waste water and analyses (40 CFR Part 136).

"Tangible Net Worth" means net worth minus intangibles such as goodwill and rights to patents or royalties.

"Temporary Diversion" means a diversion of a stream, or overland flow, which is used during coal exploration or coal mining and reclamation operations and not approved by the Division to remain after reclamation as part of the approved postmining land use.

"Temporary Impoundment" means an impoundment used during coal mining and reclamation operations, but not approved by the Division to remain as part of the approved postmining land use.

"Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four major soil horizons.

"Toxic-Forming Materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic Mine Drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or coal mining and reclamation operations which contains a substance that through chemical action or physical effects

is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

"Transfer, Assignment, or Sale of Permit Rights" means a change [~~in ownership or other effective control over the right to conduct coal mining and reclamation operations under a permit issued by the Division~~]of a permittee.

"UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES" means coal mining and reclamation operations incident to the extraction of coal by underground methods including a combination of (a) underground extraction of coal or in situ processing, construction use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and (b) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Underground Development Waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

"Undeveloped Rangeland" means, for purposes of ALLUVIAL VALLEY FLOORS, lands where the use is not specifically controlled and managed.

"Unwarranted Failure to Comply" means the failure of the permittee to prevent the occurrence of any violation of the State Program or any permit condition due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

"Upland Areas" means, with respect to ALLUVIAL VALLEY FLOORS, those geomorphic features located outside the floodplain and terrace complex such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows, or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid Existing Rights" means a set of circumstances under which a person may, subject to regulatory authority approval, conduct coal mining and reclamation operations on lands where Subsection 40-10-24(4) of the Act and R645-103-224 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of R645-103-224 and Subsection 40-10-24(4) of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Federal Act and the State Program.

(a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of coal mining and reclamation operations intended. This right must exist at the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Applicable Utah statutory or

case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable Utah law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(i) Good faith/all permits standard. All permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. At a minimum, an application must have been submitted for any permit required under R645-201, R645-301 or R645-302; or

(ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a coal mining and reclamation operation for which all permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act when the Division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Division may consider factors such as:

(A) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act depends upon use of that land for coal mining and reclamation operations;

(B) The extent to which plans used to obtain financing for the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;

(C) The extent to which investments in the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;

(D) Whether the land lies within the area identified on the life-of-mine map submitted under R645-301-521.141 before the land came under the protection of R645-103-224.

(c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by R645-103-224 or Subsection 40-10-24(4) of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of coal mining and reclamation operations:

(i) The road existed when the land upon which it is located came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and the person has a legal right to use the road for coal mining and reclamation operations;

(ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for coal mining and reclamation operations;

(iii) A valid permit for use or construction of a road in that location for coal mining and reclamation operations existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act; or

(iv) Valid existing rights exist under paragraphs (a) and (b) of this definition.

"Valley Fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation" when used in the context of the permit application information or permit eligibility requirements of Section 40-10-10(2) and Subsection 40-10-11(3) and related rules, means:

(a) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(b) A noncompliance for which the Division or the Office have provided one or more of the following types of notice:

(i) A notice of violation under R645-400-320;

(ii) A cessation order under R645-400-310;

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under R645-401 or R645-402;

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR 870, Abandoned Mine Reclamation Fund - Fee Collection and Coal Reporting; or

(v) A notice of bond forfeiture under R645-301-880.900, when:

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under R645-301-880.931, the Division orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(C) The site is covered by an alternative bonding system approved under 30 CFR 800.11(e), that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond and the person has not complied with the reimbursement requirement and paid any associated penalties.

"Violation, Failure, or Refusal" means for the purposes of R645-402, ([1]a) A violation of a condition of a permit issued under the State Program, or ([2]b) A failure or refusal to comply with any order issued under UCA 40-10-22, or any order incorporated in a final decision issued under UCA 40-10-20(2) or R645-104-500.

"Violation Notice" means any written notification from a governmental entity of a violation of law, as specified in the definition in this section, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water Supply", "State-appropriated Water", and "State-appropriated Water Supply" are all synonymous terms and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code.

~~["Violation Notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.~~

] "Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

"Willful or Willfully" means ~~[for the purposes of R645-402,]~~ that ~~[an]~~ ~~[a]~~ ~~[individual]~~ person acted ~~([+]~~ ~~[a]~~ either intentionally, voluntarily, or consciously, and ~~([2]~~ ~~[b]~~ with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out ~~an~~ ~~[corporate permittee's]~~ action or omission that constituted a violation, failure, or refusal.

~~["Willful Violation" means an act or omission which violates the State Program or any permit condition, committed by a person who intends the result which actually occurs.~~

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: ~~[July 28, 2010]~~ **2012**

Notice of Continuation: February 1, 2012

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Natural Resources; Oil, Gas and
Mining; Coal
R645-300-100
Review, Public Participation, and
Approval or Disapproval of Permit
Applications and Permit Terms and
Conditions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 35996
FILED: 03/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule identifies the coal mining permitting procedures upon the division and the mining operator that pertain to the review of the permit, the public participation required, and the approval or disapproval decisions. This rule is being amended at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment primarily modifies the division's responsibilities for review of a coal mining permit concerning the applicant's or operator's ownership or control of mining operations, provides opportunity for a person to challenge an ownership or control listing, identifies conditions where the applicant is not eligible, and identifies the updates that are appropriate for permit information. These amendments are in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-11

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. While the amendment modifies division procedures for coal permit applications, no measurable impact is expected to the state cost in such determinations.

◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules. While the amendment provides for a coal permit applicant to swear all permit information is accurate and complete prior to the final permit decision, or provide any updates if necessary, no measurable impact on compliance costs is expected for coal mine operators. If Utah did not have state primacy, coal mining companies would need to comply with relevant federal regulations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
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:
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 04/25/2012 09:00 AM, Sevier County Admin. Bldg, 250 N Main St, Richfield, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/25/2012

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-300. Coal Mine Permitting; Administrative Procedures.
R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R645-300-100 present the procedures to carry out the entitled activities.

110. Introduction.

111. Objectives. The objectives of R645-300-100 are to:

111.100. Provide for broad and effective public participation in the review of applications and the issuance or denial of permits;

111.200. Ensure prompt and effective review of each permit application by the Division; and

111.300. Provide the requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

112. Responsibilities.

112.100. The Division has the responsibility to approve or disapprove permits under the approved State Program.

112.200. The Division and persons applying for permits under the State Program will involve the public throughout the permit process of the State Program.

112.300. The Division will assure implementation of the requirements of R645-300 under the State Program.

112.400. All persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. The applicant will provide all information in an administratively complete application for review by the Division in accordance with R645-300 and the State Program.

112.500. Any permittee seeking to renew a permit for coal mining and reclamation operations solely for the purpose of reclamation and not for the further extraction, processing, or handling of the coal resource will follow the procedures set forth in R645-303-232.500.

113. Coordination with requirements under other laws. The Division will provide for the coordination of review and issuance of permits for coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); and where federal and Indian lands covered by

that Act are involved, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

120. Public Participation in Permit Processing.

121. Filing and Public Notice.

121.100. Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under R645-303-220 or renewal of a permit under R645-303-230 will place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the Division. The advertisement will contain, at a minimum, the following:

121.110. The name and business address of the applicant;

121.120. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it will indicate the north direction;

121.130. The location where a copy of the application is available for public inspection;

121.140. The name and address of the Division, where written comments, objections, or requests for informal conferences on the application may be submitted under R645-300-122 and R645-300-123;

121.150. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with R645-103-234; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; and

121.160. If the application includes a request for an experimental practice under R645-302-210, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

121.200. The applicant will make an application for a permit, significant revision under R645-303-220, or renewal of a permit under R645-303-230 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the coal mining and reclamation operation is proposed to occur, or an accessible public office approved by the Division. This copy of the application need not include confidential information exempt from disclosure under R645-300-124. The application required by R645-300-121 will be filed by the first date of newspaper advertisement of the application. The applicant will file any changes to the application with the public office at the same time the change is submitted to the Division.

121.300. Upon receipt of an administratively complete application for a permit, a significant revision to a permit under R645-303-220, or a renewal of a permit under R645-303-230, the Division will issue written notification indicating the applicant's intention to conduct coal mining and reclamation operations within the described tract of land, the application number or other identifier, the location where the copy of the application may be

inspected, and the location where comments on the application may be submitted. The notification will be sent to:

121.310. Local governmental agencies with jurisdiction over or an interest in the area of the proposed coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

121.320. All federal or state governmental agencies with authority to issue permits and licenses applicable to the proposed coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with the State Program, Section 503(a)(6) or Section 504(h) of P.L. 95-87, or 30 CFR 733.12; or those agencies with an interest in the proposed coal mining and reclamation operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, state and federal fish and wildlife agencies, and Utah State Historic Preservation Officer.

122. Comments and Objections on Permit Application.

122.100. Within 30 days of the last newspaper publication, written comments or objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by public entities notified under R645-300-121.300 with respect to the effects of the proposed coal mining and reclamation operation on the environment within their areas of responsibility.

122.200. Written objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by R645-300-121.

122.300. The Division will upon receipt of such written comments or objections:

122.310. Transmit a copy of the comments or objections to the applicants; and

122.320. File a copy for public inspection at the Division.

123. Informal Conferences.

123.100. Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or head of a federal, state, or local government agency, may request in writing that the Division hold an informal conference on the application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230. The request will:

123.110. Briefly summarize the issues to be raised by the requestor at the conference;

123.120. State whether the requestor desires to have the conference conducted in the locality of the proposed coal mining and reclamation operation; and

123.130. Be filed with the Division no later than 30 days after the last publication of the newspaper advertisement required under R645-300-121.

123.200. Except as provided in R645-300-123.300, if an informal conference is requested in accordance with R645-300-123.100, the Division will hold an informal conference within 30

days following the receipt of the request. The informal conference will be conducted as follows:

123.210. If requested under R645-300-123.120, it will be held in the locality of the proposed coal mining and reclamation operation.

123.220. The date, time, and location of the informal conference will be sent to the applicant and other parties to the conference and advertised by the Division in a newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least two weeks before the scheduled conference.

123.230. If requested in writing by a conference requestor at a reasonable time before the conference, the Division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

123.240. The requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) will apply to the conduct of the informal conference. The conference will be conducted by a representative of the Division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record will be made of the conference, unless waived by all the parties. The record will be maintained and will be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to R645-301-800.

123.300. If all parties requesting the informal conference withdrew their request before the conference is held, the informal conference may be canceled.

123.400. An informal conference held in accordance with R645-300-123 may be used by the Division as the public hearing required under R645-103-234 on proposed relocation or closing of public roads.

124. Public Availability of Permit Applications.

124.100. General Availability. Except as provided in R645-300-124.200 and R645-300-124.300, all applications for permits; permit changes; permit renewals; and transfers, assignments or sales of permit rights on file with the Division will be made available, at reasonable times, for public inspection and copying.

124.200. Limited Availability. Except as provided in R645-300-124.310, information pertaining to coal seams, test borings, core samplings, or soil samples in an application will be made available to any person with an interest which is or may be adversely affected. Information subject to R645-300-124 will be made available to the public when such information is required to be on public file pursuant to Utah law.

124.300. Confidentiality. The Division will provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which will be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to:

124.310. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment.

124.320. Information required under section 40-10-10 of the Act that is authorized by that section to be held confidential and is not on public file pursuant to Utah law and that the applicant has requested in writing to be held confidential; and

124.330. Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (P. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

130. Review of Permit Application.

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision - 120 days.

131.111.2. Amendments - 60 days.

131.112. Permit renewal - 120 days.

131.113. New underground mine applications - One year.

131.114. New surface mine applications - One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

132. Review of Compliance[-] and Entry of Information into the AVS. Based upon an administratively complete application, the Division will undertake the reviews required by R645-300-132 before making a permit eligibility determination. The Division will enter into AVS the information included in the application required by R645-301-112 and the forfeitures, unabated or uncorrected violations, cessation orders or civil penalties listed as required by R645-301-113. The Division must update the AVS with the information required and provided under R645-301-112 and R645-301-113 upon verification of any additional information submitted or discovered during the permit application process.

132.100. The Division will review [available-] information provided in accordance with R645-301-112.340 through R645-301-112.420 and R645-301-113 on violations and permit history, state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under [section]Section 518 of the [federal]Federal Act, SMCRA-derived laws of other states, and

[section]Section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states and federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant, the operator, the operations the applicant owns or controls, and the operations the operator owns or controls.

132.100.1. In addition, the Division will review ownership information provided under R645-301-112 and any other information available to review the applicant's and applicant's operator's organizational structure and ownership or control relationships; and the Division will request a narrative report from the AVS.

132.100.2. The Division will determine if the applicant or operator have previous mining experience, and if none, the Division may conduct a review under R645-300-185.300 or authorize the AVS office to review to determine if someone else with mining experience controls the mining operation.

132.100.3. Based upon the violations, permit history, ownership reviews and the AVS report, the [The] Division will then make a finding that neither the applicant, the operator, [nor any person who owns or controls]operations the applicant[-] owns or controls or operations the operator owns or controls, are [nor any person owned or controlled by the applicant is-]facing permanent permit ineligibility under R645-300-183 or currently in violation of any law, rule, or regulation referred to in R645-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:

132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

132.120. Establish for the Division that the applicant or operator, or any person owned [or controlled-]by the applicant or operator, [or any person who owns or controls the applicant] has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under R645-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R645-300-132.110[-]; or

132.121. The applicant or operator is pursuing a good faith challenge to all pertinent ownership or control listings or findings under R645-300-132.150 or an administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

132.150. AVS ownership and control information may be challenged by the owner or controller of an entire coal mining and reclamation operation, or any portion or aspect thereof or by an applicant or permittee affected by an ownership or control listing or finding.

132.150.1. To challenge an ownership or control listing or finding, a person must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials in accordance with R645-300-132.150.7 to the regulatory authority, as identified in the following statement. If the challenge concerns a pending state or federal permit application, then the person must submit written explanation to the regulatory authority with the

jurisdiction over the application. If the person is not currently seeking a permit, then the written explanation must be submitted to the regulatory authority with jurisdiction over the coal mining and reclamation operation.

132.150.2. The provisions of this subsection and of R645-300-132.150.7 through R645-300-132.150.9 apply only to challenges to ownership or control listings or findings. A person may not use these provisions to challenge liability or responsibility under any other provision of the Act or its implementing rules.

132.150.3. When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

132.150.4. A regulatory authority responsible for deciding a challenge under R645-300-132.150.1 may request an investigation by the AVS Office.

132.150.5. At any time a person listed in AVS as an owner or controller of a coal mining and reclamation operation may request an informal explanation from the AVS Office as to the reason they are shown in AVS in an ownership or control capacity. The AVS Office will provide a response within 14 days, describing why the person is listed in AVS.

132.150.6. A challenge to the listing of ownership or control, or a finding of ownership or control made under R645-300-185.300 through R645-300-185.700 must prove by a preponderance of the evidence that the person does not own or control the entire operation or relevant portion or aspect thereof, or did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.

132.150.7. In meeting the burden of proof, the person must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority, such as, but not limited to: notarized affidavits containing specific facts concerning the duties performed for an operation, the beginning and ending dates of ownership and control of the operation, and the nature and details of any transaction creating or severing the person's ownership or control of the operation; certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records; certified copies of documents filed with or issued by any state, municipal, or federal governmental agency. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If requested, the Division will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under R645-100-700 and R645-300-124.

132.150.8. The Division will review and investigate the evidence and explanatory materials submitted under R645-300-132.150.1 within 60 days of receipt, along with any other reasonably available information bearing on the challenge, and issue a written decision to the person presenting the challenge. The decision must state whether the person owns or controls the relevant coal mining and reclamation operation, or owned or controlled the operation, during the relevant time period.

132.150.9. The Division will provide the person with a copy of the decision by either certified mail, return receipt requested, or any means consistent with the rules governing service of a summons and complaint under R641. Service of the decision is

complete upon delivery and is not incomplete if you refuse to accept delivery. The Division will post all decisions made under this subsection on AVS.

132.150.10. Any person who receives a written decision under R645-300-132.150.9, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at R645-300-210, before seeking judicial review.

132.150.11. Following the Division's decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division must promptly revise the information in AVS to reflect the decision.

132.200. Any permit that is issued on the basis of proof submitted under R645-300-132.110 or pending the outcome of an appeal described in R645-300-132.120 will be [issued—conditionally] provisionally issued.

132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R645-300-210.

132.400. Permit Eligibility Determination. Based on the reviews required under R645-301-132.100, the Division will determine whether the applicant is eligible for a permit under Subsection 40-10-11(3)(c) of the Act.

132.410. Except as provided in R645-300-132.500 and R645-300-132.200, the applicant is not eligible for a permit if the Division finds any coal mining and reclamation operation that:

132.410.1. The applicant directly owns or controls has an unabated or uncorrected violation; or

132.410.2. The applicant or the applicant's operator indirectly control has an unabated or uncorrected violation and the applicant's or the applicant's operator's control was established or the violation was cited after November 2, 1988.

132.420. The Division will not issue a permit if the applicant or the applicant's operator are permanently ineligible to receive a permit under R645-300-183.

132.430. After the Division approves a permit under R645-300-133, the Division will not issue the permit until the applicant complies with the information update and certification requirement of R645-301-112.900. After the applicant completes the requirements of R645-301-112.900, the Division will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under R645-301-132.410 and R645-301-132.420. The Division will request this report no more than five business days before permit issuance under R645-300-150.

132.440. If the applicant is ineligible for a permit under R645-300-132.400, the Division will send the applicant written notification of the decision. The notice will explain why the applicant is ineligible and include notice of the applicant's appeal rights under R645-300-200.

132.500. Unanticipated events or conditions at remining sites.

132.510. The applicant is eligible for a permit under R645-300-132.400 if an unabated violation:

132.510.1. Occurred after October 24, 1992; and

132.510.2. Resulted from an unanticipated event or condition at a coal mining and reclamation operation on lands that are eligible for remaining under a permit that was held by the person applying for the new permit.

132.520. For permits issued under R645-302-240, an event or condition is presumed to be unanticipated for the purpose of R645-300-132.500 if it:

132.520.1. Arose after permit issuance;

132.520.2. Was related to prior mining; and

132.520.3. Was not identified in the permit application.

133. Written Findings for Permit Application Approval. No permit application or application for a significant revision of a permit will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

133.100. The application is complete and accurate and the applicant has complied with all the requirements of the Federal Act and the State Program;

133.200. The proposed permit area is:

133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R645-103-400 or 30 CFR 769, to have an area designated as unsuitable for coal mining and reclamation operations, unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments were made in relation to the operation covered by the permit application; or

133.220. Not within an area designated as unsuitable for coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400 or 30 CFR 769 or within an area subject to the prohibitions of R645-103-224;

133.300. For coal mining and reclamation operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under R645-301-114.200;

133.400. The Division has made an assessment of the probable cumulative impacts of all anticipated coal mining and reclamation operations on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

133.500. The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et.seq.);

133.600. The Division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Division has determined that no additional protection measures are necessary; and

133.700. The applicant has:

133.710. Demonstrated that reclamation as required by the Federal Act and the State Program can be accomplished under the reclamation plan contained in the permit application.

133.720. Demonstrated that any existing structure will comply with the applicable performance standards of R645-301 and R645-302.

133.730. Paid all reclamation fees from previous and existing coal mining and reclamation operations as required by 30 CFR Part 870.

133.740. Satisfied the applicable requirements of R645-302.

133.750. If applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of R645-301-353.400.

133.800. For a proposed remaining operation where the applicant intends to reclaim in accordance with the requirements of R645-301-553.500, the site of the operation is a previously mined area as defined in R645-100-200.

133.900. For permits to be issued for proposed remaining operations as defined in R645-100-200 and reclaimed in accordance with R645-301-553, the permit application must contain the following information:

133.910. Lands eligible for remaining;

133.920. An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

133.930. Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the State Program can be accomplished.

133.1000. The applicant is eligible to receive a permit, based on the reviews under R645-300-~~100~~131 ~~through~~and R645-300-132~~[300]~~.

134. Performance Bond Submittal. If the Division decides to approve the application, it will require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of R645-301-800.

140. Permit Conditions. Each permit issued by the Division will be subject to the following conditions:

141. The permittee will conduct coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to R645-301-800.

142. The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

143. The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

144. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee will allow the authorized representatives of the Division to:

144.100. Have the right of entry provided for in R645-400-110 and R645-400-220.

144.200. Be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.

145. The permittee will take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

145.100. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

145.200. Immediate implementation of measures necessary to comply; and

145.300. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

146. As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

147. The operator will pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

148. Within 30 days after a cessation order is issued under R645-400-310, except where a stay of the cessation order is granted and remains in effect, the permittee will either submit the following information current to when the order was issued or inform the Division in writing that there has been no change since the immediately preceding submittal of such information:

148.100. Within 60 days of any addition, departure, or change in position of any person identified in R645-301-112.300, the applicant must provide the information required under R645-301-112.310 through R645-301-112.330 and the date of any departure. [~~Any new information needed to correct or update the information previously submitted to the Division by the permittee under R645-301-112.300.~~]

148.200. If not previously submitted, the information required from a permit applicant by R645-301-112.300.

150. Permit Issuance and Right of Renewal.

151. Decision. If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R645-301-800. If the application is disapproved, specific reasons therefore will be set forth in the notification required by R645-300-152.

152. Notification. The Division will issue written notification of the decision to the following persons and entities:

152.100. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference;

152.200. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land; and

152.300. The Office.

153. Permit Term. Each permit will be issued for a fixed term of five years or less, unless the requirements of R645-301-116 are met.

154. Right of Renewal. Permit application approval will apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with R645-300-151 will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with R645-303-230.

155. Initiation of Operations.

155.100. A permit will terminate if the permittee has not begun the coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.

155.200. The Division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:

155.210. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

155.220. There are conditions beyond the control and without the fault or negligence of the permittee.

155.300. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee will be deemed to have commenced coal mining and reclamation operations at the time that the construction of the synthetic fuel or generating facility is initiated.

155.400. Extensions of time granted by the Division under R645-300-155 will be specifically set forth in the permit, and notice of the extension will be made public by the Division.

160. Improvidently Issued Permits: Review Procedures.

161. Permit review. When the Division has reason to believe that it improvidently issued a coal mining and reclamation permit it will review the circumstances under which the permit was issued, and make a preliminary finding using the criteria in R645-300-162. Where the Division finds that the permit was improvidently issued, it shall comply with R645-300-163.

161.100. The Division will make a preliminary finding that a permit was improvidently issued if, under the permit eligibility criteria of R645-300-132, the permit should not have been issued because the permittee or operator owned or controlled a coal mining and reclamation operation with an unabated or uncorrected violation; and

161.110. The permittee or operator continues to own or control the operation with the unabated or uncorrected violation; and

161.120. The violation remains unabated or uncorrected; and

161.130. The violation would cause the permittee or operator to be ineligible under the permit eligibility criteria of R645-300-132.

161.200. The Division will serve the permittee with a written notice of the preliminary finding which are based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

161.300. Within 30 days of receiving the written notice of preliminary finding, the permittee may challenge the preliminary finding, under the provisions of R645-300-162 or R645-300-132.150, by providing the Division with evidence as to why the permit was not improvidently issued under the criteria in R645-300-162.

162. Review criteria. The Division will make a preliminary finding that a coal mining and reclamation permit was improvidently issued if:

162.100. Under the violations review criteria of the regulatory program at the time the permit was issued;

162.110. The Division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

162.120. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

162.200. The violation, penalty or fee;

162.210. Remains unabated or delinquent; and

162.220. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

162.300. The permittee or operator continues to own or control the operation with the unabated or uncorrected violation; the violation remains unabated; and the violation would cause the operator or permittee to be ineligible under the permit eligibility criteria of R645-300-132.~~[Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists;]~~ or where the ownership or control link was severed the permittee continues to be responsible for the violation, penalty or fee.

162.310. In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in R645-300-132.121 affirms the validity of the violation or the ownership or control listing or finding; or

162.320. The initial judicial review decision referenced in R645-300-132.150 affirms the validity of the violation or the ownership or control listing or finding.

163. Remedial Measures.

When the Division, under R645-300-162 finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued it will use one or more of the following remedial measures:

163.100. Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

163.200. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

163.300. Suspend the permit until the violation is abated or the penalty or fee is paid; or

163.400. Rescind the permit under R645-300-164.

164. Improvidently Issued Permits: Rescission procedures. When the Division under R645-300-163 elects to rescind an improvidently issued permit or provisionally issued permit under R645-300-132.200, it will post the notice at the Division office closest to the permit area and serve on the permittee a written notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under R645-300-162 and states that:

164.100. Automatic suspension and rescissions. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee obtains temporary relief under the appeal rights of R645-300-210 or if on appeal, the permittee submits proof, and the regulatory authority finds, that;

164.110. The finding of the Division under R645-300-162 was erroneous;

164.120. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

164.130. The violation, penalty or fee is the subject of a good faith appeal, unless there is an initial judicial decision affirming the violation and that decision remains in force, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency;~~[-or]~~

164.140. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee; or

164.150. The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding under R645-300-132.150, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

164.200. Cessation of operations. After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Division~~[-and]~~.

164.300. Right to appeal. The permittee may file an appeal for administrative review of the notice under R645-300-200.

170. Final Compliance Review.

After an application is approved, but before the permit is issued, the Division will reconsider its decision to approve the application based on the compliance review required by rule R645-300-132.100 and in light of any new information submitted under R645-301-112.900 and R645-301-113.400.

171. Certifying and Updating Existing Permit Application Information. If the applicant has previously applied for a permit and the required information is already in AVS, then the applicant may update the information as follows:

171.100. If all or part of the information already in AVS is accurate and complete, then the applicant may certify to the Division by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.

171.200. If part of the information in AVS is missing or incorrect, then the applicant must submit to the Division the necessary information or corrections and swear or affirm, under oath and in writing, that the information the applicant submits is accurate and complete.

171.300. If the applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections, then the applicant must include in the permit application the information required under R645-301-112.

172. The applicant must swear or affirm, under oath and in writing, that all information provided in an application is accurate and complete. The Division will follow the requirements of R645-300-132.430 and R645-301-113.400 prior to permit issuance.

173. The Division may establish a central file to house the applicant's identity information, rather than place duplicate information in each of the applicant's permit application files. The Division will make the information available to the public upon request.

180. Post Permit Issuance Requirements for the Division and Other Actions Based on Ownership, Control, and Violation Information.

181. Within thirty days, the Division must enter in the AVS the data as follows:

181.100. Permit records after the permit is issued or subsequent changes made:

181.200. Unabated or uncorrected violations after the abatement or correction period for a violation expires:

181.300. Changes to information initially required to be provided by an applicant under R645-301-112 after receiving notice of a change; and

181.400. Changes in violation status after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

182. Any time the Division discovers that any person owns or controls an operation with an unabated or uncorrected violation, the Division will determine whether enforcement action is appropriate under R645-400, R645-402 or R645-403. The Division must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

183. The Division must serve a preliminary finding of permanent permit ineligibility on an applicant or operator, based on the control relationships and violations that would make the applicant or operator ineligible for a permit under R645-300-132.400 and R645-301-113.300, if the following criteria are met:

183.100. The applicant or operator has controlled or currently is controlling a coal mining and reclamation operation with a demonstrated pattern of willful violations under R645-301-113.300; and

183.200. The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing rules, the State program, or the permit.

184. The permittee, applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility under R645-300-200.

185. Entry into the Applicant Violator System (AVS) Database.

185.100. If the applicant, permittee or operator does not request a hearing, and the time for seeking a hearing has expired, the Division will enter the permanent ineligibility finding into AVS.

185.200. If the applicant, permittee, or operator requests a hearing, the Division will enter a permanent ineligibility finding into the AVS, only if that finding is upheld on administrative appeal.

185.300. At any time, the Division may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If the Division identifies such a person, the Division must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of

ownership or control. The Division's written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

185.400. After the Division issues a written preliminary finding under R645-300-185.300, the Division will allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate their lack of ownership or control.

185.500. If after reviewing any information provided under R645-300-185.400, the Division is persuaded that the person is not an owner or controller, the Division will serve a written notice to that effect.

185.600. If, after reviewing any information provided under R645-300-185.400, the Division still finds that a person is an owner or controller, or if the person does not submit any information within the 30-day period, the Division will issue a written finding and enter the finding into AVS.

185.700. A person identified under R645-300-185.600 may challenge the finding using the provisions of R645-300-132.150.1 through R645-300-132.150.7.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: ~~July 28, 2010~~ 2012

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Natural Resources; Oil, Gas and Mining; Coal **R645-301-100** General Contents

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35997

FILED: 03/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This purpose of this rule is to establish general requirements for coal mining permits such as legal, financial and compliance information, application formats, and maps. This rule is being amended at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment modifies the information required in a coal mining application pertaining to those with an interest, whether individuals or business entities. These amendments are in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-10

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. While the amendment clarifies the information required in an application, no measurable impact is expected to the state cost in such determinations.
- ◆ LOCAL GOVERNMENTS: No local government costs or savings are anticipated. Local government is not impacted by this rule.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules. While the amendment clarifies the information included in applications for those with interests, no measurable impact on compliance costs is expected for coal mine operators. If Utah did not have state primacy, coal mining companies would need to comply with relevant federal regulations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
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:

- ◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 04/25/2012 09:00 AM, Sevier County Admin. Bldg, 250 N Main St, Richfield, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2012

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-301. Coal Mine Permitting: Permit Application Requirements.****R645-301-100. General Contents.**

The rules in R645-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to the Division all of the information required by R645-301-100.

111.300. Applicability. The requirements of R645-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R645-301-112 and R645-301-113 [~~in a format prescribed by OSM rules governing the Applicant Violator System information needs~~].

111.500. The Division will enter the information disclosed under R645-301-110 and R645-301-112 into the AVS database, but need not make a finding as provided for under R645-300-185.300 through R645-300-185.600 before entering the information into the AVS database.

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant [~~is~~and operator ~~are~~ a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number [~~and, as applicable, social security number and employer identification number~~] of the:

112.210. Applicant; and any operator, if different from the applicant;

112.220. Applicant's resident agent; and

112.230. The tax payer identification number for the applicant and operator; [~~Person who will pay the abandoned mine-land reclamation fee.~~]

112.300. The name, address and telephone number of each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business in the organizational structure of the applicant and operator, the applicant must also provide the following required information for every president, chief executive officer, officer, partner, member, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity; [~~For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 of this chapter, as applicable;~~]

112.310. The person's name, address, and telephone number; ~~[social security number and employer identification number;]~~

112.320. The person's position, title and ~~[ownership or control]~~ relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. ~~[The title of the person's]~~ For each position, the date the position was assumed, and when submitted under R645-300-147, the date of departure from the position;

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number ~~[-with date of issuance],~~ under which the ~~[person owns or controls]~~ applicant, the operator, the applicant's partners or principal shareholders, and the operator's partners or principal shareholders operate, or previously operated ~~[owned or controlled,]~~ a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the ~~[person]~~ applicant or the operator in any State in the United States[-];

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or operator in the last five years, ~~[by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200]~~ provide the coal mining and reclamation operation's:

112.410. Permittee's and operator's ~~[N]~~ name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, ~~[the date of issuance of the MSHA number,]~~ and the regulatory authority; and

112.420. Ownership or control relationship to the applicant and the operator, including percentage of ownership and location in organizational structure.

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.800. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R645-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R645-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant, the operator, or any subsidiary, affiliate, or entity which the applicant or the operator own or control or which is under common control of the operator and ~~[or any subsidiary, affiliate, or persons controlled by or under common control with]~~ the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. Forfeited a performance bond or similar security deposited in lieu of bond in the five years preceding the date of submission of the application;

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R645-301-113.110 and R645-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the applicant or operator during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or operator ~~[by any person who owns or controls the applicant]~~. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

113.310. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

113.320. A brief description of the violation alleged in the notice;

113.330. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in R645-301-113.300 to obtain administrative or judicial review of the violation;

113.340. The current status of the proceedings and of the violation notice; ~~[-and]~~

113.350. The actions, if any, taken by any person identified in R645-301-113.300 to abate the violation; and[-];

113.360. If the abatement period for a violation in a notice of violation issued under 30 CFR 843.12 or R645-400-320 has not expired, certification that the violation is being abated or

corrected to the satisfaction of the agency with jurisdiction over the violation.

113.400. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.

114. Right-of-Entry Information.

114.100. An application will contain a description of the documents upon which the applicant bases their legal right to enter and begin coal mining and reclamation operations in the permit area and will state whether that right is the subject of pending litigation. The description will identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

114.200. Where the private mineral estate to be mined has been severed from the private surface estate, an applicant will also submit:

114.210. A copy of the written consent of the surface owner for the extraction of coal by certain coal mining and reclamation operations;

114.220. A copy of the conveyance that expressly grants or reserves the right to extract coal by certain coal mining and reclamation operations; or

114.230. If the conveyance does not expressly grant the right to extract the coal by certain coal mining and reclamation operations, documentation that under applicable Utah law, the applicant has the legal authority to extract the coal by those operations.

114.300. Nothing given under R645-301-114.100 through R645-301-114.200 will be construed to provide the Division with the authority to adjudicate property rights disputes.

115. Status of Unsuitability Claims.

115.100. An application will contain available information as to whether the proposed permit area is within an area designated as unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under R645-103-300, R645-103-400, or 30 CFR Part 769.

115.200. An application in which the applicant claims the exemption described in R645-103-333 will contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed coal mining and reclamation operations.

115.300. An application that proposes to conduct coal mining and reclamation operations within 300 feet of an occupied dwelling or within 100 feet of a public road must meet the requirements of R645-103-234 or R645-103-235, respectively.

116. Permit Term.

116.100. Each permit application will state the anticipated or actual starting and termination date of each phase of the coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

116.200. If the applicant requires an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation, the application will:

116.210. Be complete and accurate covering the specified longer term; and

116.220. Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

117. Insurance, Proof of Publication and Facilities or Structures Used in Common.

117.100. A permit application will contain either a certificate of liability insurance or evidence of self-insurance in compliance with R645-301-800.

117.200. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Division will be filed with the Division and will be made a part of the application not later than 4 weeks after the last date of publication as required by R645-300-121.100.

117.300. The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R645 Rules for the facility or structure will be met.

118. Filing Fee. Each permit application to conduct coal mining and reclamation operations pursuant to the State Program will be accompanied by a fee of \$5.00.

120. Permit Application Format and Contents.

121. The permit application will:

121.100. Contain current information, as required by R645-200, R645-300, R645-301 and R645-302.

121.200. Be clear and concise; and

121.300. Be filed in the format required by the Division.

122. If used in the permit application, referenced materials will either be provided to the Division by the applicant or be readily available to the Division. If provided, relevant portions of referenced published materials will be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

123. Applications for permits; permit changes; permit renewals; or transfers, sales or assignments of permit rights will contain the notarized signature of a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

130. Reporting of Technical Data.

131. All technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

132. Technical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.

140. Maps and Plans.

141. Maps submitted with permit applications will be presented in a consolidated format, to the extent possible, and will include all the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area will be at a scale of 1:6,000 or larger. Maps of the adjacent area will clearly show the lands and waters within those areas and be at a scale determined by the Division, but in no event smaller than 1:24,000.

142. All maps and plans submitted with the permit application will distinguish among each of the phases during which coal mining and reclamation operations were or will be conducted at any place within the life of operations. At a minimum, distinctions will be clearly shown among those portions of the life of operations in which coal mining and reclamation operations occurred:

142.100. Prior to August 3, 1977;

142.200. After August 3, 1977, and prior to either:

142.210. May 3, 1978; or

142.220. In the case of an applicant or operator which obtained a small operator's exemption in accordance with the Interim Program rules (MC Rules), January 1, 1979;

142.300. After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the State Program; and

142.400. After the estimated date of issuance of a permit by the Division under the State Program.

150. Completeness. An application for a permit to conduct coal mining and reclamation operations will be complete and will include at a minimum information required under R645-301 and, if applicable, R645-302.

160. Permit change, renewal, transfer, sale and assignment.

Procedures to change, renew, transfer, assign, or sell existing coal mining and reclamation permit rights are presented at R645-303.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: ~~July 28, 2010~~ **2012**

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

**Natural Resources; Oil, Gas and
Mining; Coal
R645-302-200
Special Categories of Mining**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35998
FILED: 03/30/2012**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule identifies the minimum requirements for approval to conduct coal mining under special categories of mining. This rule is being amended at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment includes a minimum standard if a mining operator plans to pursue re-mining of a previously mined area with coal resources. This amendment is in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-10

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. While the amendment clarifies the information required in an application for a re-mining area, no measurable impact is expected to the state cost in such application determinations.

♦ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules. The amendment clarifies the information included in an application for re-mining an area with coal resources. Mining a previously mined area in Utah is not common. If Utah did not have state primacy, coal mining companies would need to comply with corresponding federal regulations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
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:

♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 04/25/2012 09:00 AM, Sevier County Admin. Bldg, 250 N Main St, Richfield, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2012

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-302. Coal Mine Permitting: Special Categories and Areas of Mining.****R645-302-200. Special Categories of Mining.**

The rules in R645-302-200 present the requirements for information to be included in the permit application to conduct coal mining and reclamation operations for designated special categories of mining and present procedures to process said permit applications.

210. Experimental Practices Mining.

211. Experimental practices provide a variance from environmental protection performance standards of the Act, of R645-301, and the State Program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the Division and the Office and if they are incorporated in a permit or permit change issued in accordance with the requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-280, R645-302-310, R645-302-320, or R645-303.

212. An application for an experimental practice will contain descriptions, maps, plans, and data which show:

212.100. The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

212.200. How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

212.300. That the experimental practice:

212.310. Is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R645-301 and R645-302; and

212.320. Will not reduce the protection afforded public health and safety below that provided by the requirements of R645-301 and R645-302; and

212.400. That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program

will ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the Division and the Office to:

212.410. Evaluate the effectiveness of the experimental practice; and

212.420. Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after coal mining and reclamation operations.

213. Applications for experimental practices will comply with the public notice requirements of R645-300-120.

214. No application for an experimental practice under R645-302-210 will be approved until the Division first finds in writing and the Office then concurs that:

214.100. The experimental practice encourages advances in coal mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

214.200. The experimental practice is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R645-301 and R645-302;

214.300. The coal mining and reclamation operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

214.400. The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under R645-301 and R645-302.

215. Experimental practices granting variances from the special environmental protection performance standards of Sections 515 and 516 of the Federal Act applicable to prime farmlands will be approved only after consultation with the NRCS.

216. Each person undertaking an experimental practice will conduct the periodic monitoring, recording and reporting program set forth in the application, and will satisfy such additional requirements as the Division or the Office may impose to ensure protection of the public health and safety and the environment.

217. Each experimental practice will be reviewed by the Division at a frequency set forth in the approved permit, but no less frequently than every two and one-half years. After review, the Division may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the Division will be sent to the permittee and will be subject to the provisions for administrative and judicial review of R645-300-200.

218. Revisions or amendments to an experimental practice will be processed in accordance with the requirements of R645-303-220 and approved by the Division. Any revisions which propose significant alterations in the experimental practice will, at a minimum, be subject to notice, hearing, and public participation requirements of R645-300-120 and concurrence by the Office. Revisions that do not propose significant alterations in the experimental practice will not require concurrence by the Office.

220. Mountaintop Removal Mining.

221. R645-302-220 applies to any person who conducts or intends to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES by mountaintop removal mining.

222. Mountaintop removal mining means SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in R645-302-227.500, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of R645-302-220.

223. The Division may issue approval to conduct mountaintop removal mining, without regard to the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

223.100. The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

223.110. After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the Division to constitute an equal or better economic or public use of the affected land compared with the premining use;

223.120. The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of R645-301-413.100 through R645-301-413.300;

223.130. The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be:

223.131. Compatible with adjacent land uses;

223.132. Obtainable according to data regarding expected need and market;

223.133. Assured of investment in necessary public facilities;

223.134. Supported by commitments from public agencies where appropriate;

223.135. Practicable with respect to private financial capability for completion of the proposed use;

223.136. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

223.137. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

223.140. The proposed use would be consistent with adjacent land uses and existing Utah and local land use plans and programs; and

223.150. The Division has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and to any Utah or federal agency which the Division, in its discretion, determines to have an interest in the proposed use;

223.200. The applicant demonstrates that in place of restoration of the land to be affected to the approximate original contour under R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and

R645-302-234, the SURFACE COAL MINING AND RECLAMATION ACTIVITY will be conducted in compliance with the requirements of R645-302-227.

223.300. The requirements of R645-302-227 are made a specific condition of the permit;

223.400. All other requirements of the State Program are met by the proposed operations; and

223.500. The application to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES clearly identifies mountaintop removal mining.

224. Any permits incorporating a variance issued under R645-302-220 will be reviewed by the Division to evaluate the progress and development of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES to establish that the operator is proceeding in accordance with the terms of the variance:

224.100. Within the sixth month preceding the third year from the date of its issuance;

224.200. Before each permit renewal; and

224.300. Not later than the middle of each permit term.

225. Any review required under R645-302-224 need not be held if the permittee has demonstrated and the Division finds, in writing, within three months before the scheduled review, that all SURFACE COAL MINING AND RECLAMATION ACTIVITIES under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the State Program.

226. The terms and conditions of a permit that includes mountaintop removal mining may be modified at any time by the Division, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the State Program.

227. Performance Standards. Under the State Program, SURFACE COAL MINING AND RECLAMATION ACTIVITIES may be conducted under a variance from the requirement of R645-301 and R645-302 for restoring affected areas to their approximate original contour, if:

227.100. The Division grants the variance under a permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES, in accordance with R645-302-220;

227.200. The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of that overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

227.300. An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

227.400. The alternative land use requirements of R645-301-413.100 through R645-301-413.300 and all applicable requirements of R645-301 and R645-302 and the State Program, other than the requirement to restore affected areas to their approximate original contour, are met;

227.500. An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the Division may allow an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

227.510. The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

227.520. A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

227.600. The final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed 1v:2h except where engineering data substantiates, and the Division finds, in writing, and includes in the permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES under R645-302-220 that a minimum static safety factor of 1.5 will be attained;

227.700. The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage will not be through or over a valley or head-of-hollow fill and natural watercourses below the lowest coal seam mined will not be damaged;

227.800. All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with nontoxic spoil to prevent pollution and achieve the approved postmining land use; and

227.900. Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under R645-302-227.300 and R645-302-227.400. All excess spoil material not retained on the mountaintop will be placed in accordance with applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-731.100 through R645-301-731.522, R645-301-731.800, R645-301-742.300, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

230. Steep Slope Mining.

231. The rules in R645-302-230 apply to any person who conducts or intends to conduct steep slope coal mining and reclamation operations, except:

231.100. Where an operator proposes to conduct coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the coal mining and reclamation operation proceeds;

231.200. Where a person obtains a permit under the provisions of R645-302-220; or

231.300. To the extent that a person obtains a permit incorporating a variance under R645-302-270.

232. Any application for a permit to conduct coal mining and reclamation operations covered by R645-302-230 will contain sufficient information to establish that the operations will be conducted in accordance with the requirements of R645-302-234.

233. No permit will be issued for any coal mining and reclamation operations covered by R645-302-230, unless the Division finds, in writing, that in addition to meeting all other requirements of R645-301 and R645-302, the operation will be conducted in accordance with the requirements of R645-302-234.

234. Backfilling and Grading.

234.100. Coal mining and reclamation operations on steep slopes will be conducted so as to meet the requirements of

R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with R645-302-227.

234.200. The following materials will not be placed on the downslope except as provided for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES under R645-301-553:

234.210. Spoil;

234.220. Waste materials of any type;

234.230. Debris, including that from clearing and grubbing; and

234.240. Abandoned or disabled equipment.

234.300. Land above the highwall will not be disturbed unless the Division finds that this disturbance will facilitate compliance with the environmental protection standards of R645-301 and R645-302 and the disturbance is limited to that necessary to facilitate compliance.

234.400. Woody materials will not be buried in the backfilled area unless the Division determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

240. Auger Mining and Remining Operations.

241. The Rules given under R645-302-240 apply to any person who conducts or intends to conduct coal mining and reclamation operations utilizing augering operations.

241.100. To the extent not otherwise addressed in the permit application, the applicant will identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

241.200. With regard to potential environmental and safety problems referred to in R645-302-241.100, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

242. Any application for a permit that includes operations covered by R645-302-240 will contain, in the mining and reclamation plan, a description of the augering or remining methods to be used and the measures to be used to comply with R645-302-244 and R645-302-245.

243. No permit will be issued for any operations covered by R645-302-240 unless the Division finds, in writing, that in addition to meeting all other applicable requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303, the operation will be conducted in compliance with R645-302-244 and R645-302-245.

244. The Division may prohibit auger mining, if necessary, to:

244.100. Maximize the utilization, recoverability, or conservation of the solid-fuel resource; or

244.200. Protect against adverse water-quality impacts.

245. Performance Standards.

245.100. Coal Recovery.

245.110. Auger mining will be conducted so as to maximize the utilization and conservation of the coal in accordance with R645-301-522.

245.120. Auger mining will be planned and conducted to maximize recoverability of mineral reserves remaining after coal mining and reclamation operations are completed.

245.130. Each person who conducts auger mining operations will leave areas of undisturbed coal, as approved by the Division, to provide access for future underground coal mining and reclamation activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination will be made by the Division upon presentation of appropriate technical evidence by the operator.

245.200. Hydrologic Balance.

245.210. Auger mining and remining operations will be planned and conducted to minimize disturbances to the prevailing hydrologic balance in accordance with the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751.

245.220. All auger holes, except as provided in R645-302-245.230, will be:

245.221. Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material. If sealing is not possible within 72 hours, the discharge will be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

245.222. Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Division, if the holes are not discharging water containing acid- or toxic-forming material.

245.230. Auger holes need not be sealed with an impervious material so as to prevent drainage if the Division determines that:

245.231. The resulting impoundment of water may create a hazard to the environment or public health and safety; and

245.232. The drainage from the auger holes will:

245.232.1. Not pose a threat of pollution to surface water; and

245.232.2. Comply with the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751.

245.300. Subsidence Protection. Auger mining and remining operations will be conducted in accordance with the requirements of R645-301-525.210 and R645-301-525.230.

245.400. Backfilling and Grading.

245.410. General. Auger mining and remining operations will be conducted in accordance with the backfilling and grading requirements of R645-301-537.200 and R645-301-553.

245.420. Remining will comply with the requirements of R645-301-553.500 and R645-301-553.600. Where auger mining operations affect previously mined areas that were not reclaimed to the standards of the R645 Rules and the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the highwall, the highwall will be

eliminated to the maximum extent technically practical in accordance with the following criteria:

245.421. The person who conducts the auger mining operation will demonstrate to the Division that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3;

245.422. All spoil generated by the auger mining operation and any associated SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and any other reasonably available spoil will be used to backfill the area. Reasonably available spoil will include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area will include spoil in the immediate vicinity of the auger mining operation;

245.423. The coal seam mined will be covered with a minimum of four feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

245.424. Any remnant of the highwall will be stable and not pose a hazard to the public health and safety or to the environment; and

245.425. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

245.500. Protection of Underground Mining. Auger holes will not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with R645-301-513.700 and R645-301-523.200.

250. In Situ Processing Activities.

251. R645-302-250 applies to any person who conducts or intends to conduct coal mining and reclamation operations utilizing in situ processing activities.

252. Any application for a permit that includes operations covered by R645-302-250 will address all requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303 applicable to coal mining and reclamation operations. In addition, the mining and reclamation operations plan for operations involving in situ processing activities will contain information establishing how those operations will be conducted in compliance with the requirements of R645-302-254, including:

252.100. Delineation of proposed holes and wells and production zone for approval of the Division;

252.200. Specifications of drill holes and casings proposed to be used;

252.300. A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

252.400. Plans for monitoring surface and ground water and air quality as required by the Division.

253. No permit will be issued for operations covered by R645-302-250, unless the Division first finds, in writing, upon the basis of a complete application made in accordance with R645-302-252, that the operation will be conducted in compliance with all requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303.

254. Performance Standards.

254.100. The person who conducts in situ processing activities will comply with R645-301 and R645-302-254.

254.200. In situ processing activities will be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

254.210. Avoiding discharge of fluids into holes or wells, other than as approved by the Division;

254.220. Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Division;

254.230. Avoiding annular injection between the wall of the drill hole and the casing; and

254.240. Preventing discharge of process fluid into surface waters.

254.300. Each person who conducts in situ processing activities will submit for approval as part of the application for permit under R645-302-250, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

254.400. Each person who conducts in situ processing activities will prevent flow of the process recovery fluid:

254.410. Horizontally beyond the affected area identified in the permit; and

254.420. Vertically into overlying or underlying aquifers.

254.500. Each person who conducts in situ processing activities will restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

254.600. Monitoring.

254.610. Each person who conducts in situ processing activities will monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Division under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

254.620. Air and water quality monitoring will be conducted in accordance with monitoring programs approved by the Division as necessary according to appropriate federal and Utah air and water quality standards.

260. Coal Processing Plants Not Located Within the Permit Area of a Mine.

261. R645-302-260 applies to any person who operates or intends to operate a coal processing plant outside the permit area of

any coal mining and reclamation operation, other than such plants which are located at the site of ultimate coal use. Any person who operates such a processing plant will obtain a permit from the Division in accordance with the requirements of R645-302-260.

262. Any application for a permit that includes operations covered by R645-302-260 will contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the processing plant and support facilities operated incident thereto or resulting therefrom. The plan will demonstrate that those operations will be conducted in compliance with R645-302-264.

263. No permit will be issued for any operation covered by R645-302-260, unless the Division finds in writing that, in addition to meeting all other applicable requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303, the operations will be conducted in compliance with the requirements of R645-302-264.

264. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at coal processing plants will comply with the requirements listed below.

264.100. Signs and markers for the coal processing plant, coal processing waste disposal area, and water-treatment facilities will comply with R645-301-521.200.

264.200. Surface drainage will be controlled according to the following:

264.210. Any stream channel diversion will comply with R645-301-742.300;

264.220. Drainage from any disturbed area related to the coal processing plant will comply with R645-301-356.300, R645-301-356.400, R645-301-513.300, R645-301-532, R645-301-742.100 through R645-301-742.240, R645-301-744, and R645-301-763.200 and all discharges from these areas will meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751 and any other applicable Utah or federal law; and

264.230. Permanent impoundments associated with coal processing plants will meet the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, and R645-301-743. Dams constructed of or impounding coal processing waste will comply with R645-301-536.400 and R645-301-746.300.

264.300. Disposal of coal processing waste, noncoal mine waste, and excess spoil will comply with R645-301-210 through R645-301-212, R645-301-412.300, R645-301-512.210 through R645-301-512.230, R645-301-513.400, R645-301-513.800, R645-301-514.100, R645-301-514.200, R645-301-515.200, R645-301-528.310, R645-301-528.322 through R645-301-528.323, R645-301-528.320, R645-301-528.330, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536 through R645-301-536.200, R645-301-536.300 through R645-301-536.500, R645-301-536.900, R645-301-542.720 through R645-301-542.740, R645-301-553.240 through R645-301-553.250, R645-301-745.100, R645-301-745.300 through R645-301-745.400, R645-301-746.100 through R645-301-746.300, and R645-301-747.

264.400. Fish, wildlife, and related environmental values will be protected in accordance with R645-301-333, R645-301-342, and R645-301-358.

264.500. Support facilities related to the coal processing plant will comply with R645-301-526.220 and roads will comply with R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-532.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

264.600. Cessation of operations will be in accordance with R645-301-515.300 and R645-301-541.100 through R645-301-541.300.

264.700. Erosion and air pollution attendant to erosion will be controlled in accordance with R645-301-244.100 and R645-301-244.300.

264.800. Adverse effects upon, or resulting from, nearby underground coal mining activities will be minimized by appropriate measures including, but not limited to, compliance with R645-301-513.700 and R645-301-523.200.

264.900. Reclamation will follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with R645-301-232 through R645-301-233.100, R645-301-234, R645-301-242, R645-301-244.200, R645-301-352 through R645-301-357, R645-301-413, R645-301-512.260, R645-301-537.200, R645-301-553, and R645-302-271.

270. Variances from Approximate Original Contour Restoration Requirements.

271. The Division may issue approval or, if applicable, a permit for nonmountaintop removal mining in steep slope areas which includes a variance from the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600 through R645-301-553.900, and R645-302-234 to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the Division finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are satisfied:

271.100. The alternative postmining land use requirements of R645-301-413.300 are met;

271.200. All applicable requirements of the State Program, other than the requirements to restore disturbed areas to their appropriate original contour are met;

271.300. After consultation with the appropriate land use agencies, if any, the potential use is shown to constitute an equal or better economic or public use;

271.400. Federal, Utah and local government agencies with an interest in the proposed land use have had an adequate period of time in which to review and comment on the proposed use;

271.500. After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential or public postmining land use (including recreational facilities);

271.600. The surface landowner of the lands within the permit area has knowingly requested, in writing, as part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential or public use (including recreational facilities). The request will be made separately from any surface owner consent given for the operations under R645-301-114 and will show an

understanding that the variance could not be granted without the owner's request;

271.700. The watershed of lands within the proposed permit and adjacent areas will be improved by the coal mining and reclamation operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if:

271.710. The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws; and

271.720. The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water;

271.800. Engineering. The proposed design plan for the variance will be prepared and certified as described under R645-301-512.260. The proposed design plan will also meet the following requirements:

271.810. Unless the highwall is determined to be retained under R645-301-553.650, the highwall will be completely backfilled with spoil material, in a manner which results in a static factor of safety at least 1.3, using standard geotechnical analysis; and

271.820. Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and R645 Rules will be placed on the mine bench. All spoil not retained on the bench will be placed in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400; and

271.900. After Division approval, the watershed of the permit and adjacent areas is shown to be improved.

272. If a variance is granted under R645-302-270:

272.100. The requirements of R645-302-270 will be included as a specific condition of the permit; and

272.200. The permit will be specifically marked as containing a variance from approximate original contour.

273. A permit incorporating a variance under R645-302-270 will be reviewed by the Division at least every 30 months following the issuance of the permit to evaluate the progress and development of the coal mining and reclamation operations to establish that the operator is proceeding in accordance with the terms of the variance.

274. If the permittee demonstrates to the Division that the coal mining and reclamation operation has been, and continues to be, conducted in compliance with the terms and conditions of the permit, the requirements of the Act, the R645 Rules, and the State Program, the review specified in R645-302-273 need not be held.

275. The terms and conditions of a permit incorporating a variance under R645-302-270 may be modified at any time by the

Division, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the State Program.

280. Variances for Delay in Contemporaneous Reclamation Requirement in Combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

281. Applicability. R645-302-280 applies to any person or persons conducting or intending to conduct combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where a variance is requested from the contemporaneous reclamation requirements of R645-301-352.

282. Application Contents for Variances. Any person desiring a variance under R645-302-280 will file with the Division complete applications for both the SURFACE COAL MINING AND RECLAMATION ACTIVITIES and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are to be combined. The reclamation and operation plans for these permits will contain appropriate narratives, maps, and plans, which:

282.100. Show why the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to assure maximum practical recovery of the coal;

282.200. Show how multiple future disturbances of surface lands or waters will be avoided;

282.300. Identify the specific surface areas for which a variance is sought and the sections of the State Program from which a variance is being sought;

282.400. Show how the activities will comply with R645-301-513.700 and R645-301-523.200 and other applicable requirements of the State Program;

282.500. Show why the variance sought is necessary for the implementation of the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

282.600. Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of disturbed areas is delayed; and

282.700. Show how off-site storage of spoil will be conducted to comply with the requirements of the Act, R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, R645-301-745.400, and the State Program.

283. Issuance of Permit. A permit incorporating a variance under R645-302-280 may be issued by the Division if it first finds, in writing, upon the basis of a complete application filed in accordance with R645-302-280, that:

283.100. The applicant has presented, as part of the permit application, specific, feasible plans for the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

283.200. The proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

283.300. The applicant has satisfactorily demonstrated that the applications for the SURFACE COAL MINING AND RECLAMATION ACTIVITIES and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conform to the requirements of the State Program;

283.400. The disturbed area proposed for the variance has been shown by the applicant to be necessary for implementing the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

283.500. No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by R645-301, R645-302, and the State Program;

283.600. The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of R645-301-513.700, R645-301-532.200, and the State Program;

283.700. Provisions for off-site storage of spoil will comply with the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, R645-301-745.400, and the State Program;

283.800. Liability under the performance bond required to be filed by the applicant with the Division pursuant to R645-301-800 and the State Program will be for the duration of the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and until all requirements of R645-301-800 and the State Program have been complied with; and

283.900. The permit for the coal mining and reclamation operation contains specific conditions:

283.910. Delineating the particular surface areas for which a variance is authorized;

283.920. Identifying the applicable provisions of R645 Rules and the State Program; and

283.930. Providing a detailed schedule for compliance with the provisions of R645-302-280.

284. Review of Permits Containing Variances. Permits to conduct coal mining and reclamation operations that contain variances granted under R645-302-280 will be reviewed by the Division no later than three years from the dates of issuance of the permit and any permit renewals.

290. Small Operator Assistance Program (SOAP).

291. General Information on SOAP. The rules in R645-302-290 describe the Small Operator Assistance Program (SOAP) and govern the procedures for providing assistance to eligible small mine operators who request assistance under Section 40-10-10(3) of the Act, for:

291.100. The determination of the probable hydrologic consequences of mining and reclamation, under Section 40-10-10(2)(c) of the Act; and

291.200. The statement of physical and chemical analyses of test borings or core samples, under Section 40-10-10(2)(d) of the Act.

292. Objectives. The objectives of this part are to meet the intent of Section 40-10-10(3) of the Act by:

292.100. Providing financial and other necessary assistance to qualified small operators; and

292.200. Assuring that the Division will have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

293. Financial Assistance. The Division will provide financial and other assistance under Section 40-10-10(3) of the Act, contingent upon receipt of funding.

293.100. Assistance Funding.

293.110. Use of Funds. Funds specifically authorized for SOAP will be used to provide the services specified in R645-302-299 and will not be used to cover administrative expenses.

293.120. Allocation of Funds. The Division Mined Land Reclamation Program Administrator, hereinafter referred to as the "Program Administrator", will establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to R645-302-290.

293.200. Applicant Liability.

293.210. The applicant will reimburse the Division for the cost of the laboratory services performed pursuant to R645-302-290 if:

293.211. The applicant submits false information, fails to submit a permit application within one year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

293.212. The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 100,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first five years after issuance of the permit whichever is shorter; or

293.213. The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 100,000 ton annual production limit during any consecutive 12-month period of the remaining term of the permit. Under R645-302-293.213 the applicant and its successor are jointly and severally obligated to reimburse the Division.

293.220. The Division may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

294. Responsibilities of the Division. The Division will:

294.100. Review requests for assistance and determine qualified operators;

294.200. Develop and maintain a list of qualified laboratories, and select and pay laboratories for services rendered;

294.300. Conduct periodic on-site evaluations of SOAP activities with the operator;

294.400. Participate with the Office in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency, and other appropriate agencies or institutions; and

294.500. Insure that applicable equal opportunity in employment provisions are included within any contract or other procurement documents.

295. Qualified Laboratories.

295.100. Basic Qualifications. To be designated a qualified laboratory, a firm will demonstrate that it:

295.110. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

295.120. Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

295.130. Meets applicable Federal or Utah safety and health requirements;

295.140. Has analytical, monitoring and measuring equipment capable of meeting applicable standards;

295.150. Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of R645-301-623 through R645-301-623.200, R645-301-624 through R645-301-626, R645-301-723, R645-301-724.100 through R645-301-724.320, R645-301-724.500, R645-301-725 through R645-301-729.200, R645-301-731, R645-301-731.210 through R645-301-731.213, R645-301-731.220 through R645-301-731.223, and any other applicable provisions of the R645 Rules. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator; and

295.160. Has the capability of performing services for either the determination or statement referenced in R645-302-299.200.

295.200. Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division.

296. Eligibility for Assistance.

296.100. Applicants are eligible for assistance if they:

296.110. Intend to apply for a permit pursuant to the State Program;

296.120. Establish that their probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of their permit or during the first five years after issuance of their permit, whichever period is shorter, will not exceed 100,000 tons. Production from the following operations will be attributed to the applicant:

296.121. The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a five percent interest;

296.122. The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than five percent of the applicant's operation;

296.123. All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

296.124. All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them;

296.130. Are not restricted in any manner from receiving a permit under the State Program; and

296.140. Do not organize or reorganize their company solely for the purpose of obtaining assistance under the SOAP.

296.200. The Division may provide alternate criteria or procedures for determining the eligibility of an operator for

assistance under SOAP, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of R645-302-296.100.

297. Filing for Assistance. Each application for assistance will include the following information:

297.100. A statement of the operator's intent to file a permit application;

297.200. The names and addresses of:

297.210. The permit applicant; and

297.220. The operator if different from the applicant;

297.300. A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under R645-302-296. The schedule will include for each location:

297.310. The operator or company name under which coal is or will be mined;

297.320. The permit number and MSHA number;

297.330. The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under R645-302-296; and

297.340. The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit;

297.400. A description of:

297.410. The proposed method of coal mining;

297.420. The anticipated starting and termination dates of coal mining and reclamation operations;

297.430. The number of acres of land to be affected by the proposed coal mining and reclamation operation; and

297.440. A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

297.500. A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:

297.510. The area of land to be affected;

297.520. The location of any existing or proposed test borings; and

297.530. The location and extent of known workings of any underground mines; and

297.600. Copies of documents which show that:

297.610. The applicant has a legal right to enter and commence mining within the permit area; and

297.620. A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

298. Application Approval and Notice.

298.100. If the program administrator finds the applicant eligible, then the applicant will be informed in writing that the application is approved.

298.200. If the program administrator finds the applicant ineligible, then the applicant will be informed in writing that the application is denied. The notice of denial will state the reasons for denial.

299. Program Services and Data Requirements.

299.100. To the extent possible with available funds, the program administrator will select and pay a qualified laboratory to

make the determination and statement referenced in R645-302-299.200 for eligible operators who request assistance.

299.200. The program administrator will determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator will be sufficient to satisfy the requirements for:

299.210. The determination of the probable hydrologic consequences of the coal mining and reclamation operations in the proposed permit area and adjacent areas in accordance with R645-301-728 and any other applicable provisions of the R645 Rules; and

299.220. The statement of the results of test borings or core samplings for the proposed permit area in accordance with R645-301-624 and any other applicable provisions of the R645 Rules.

299.300. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

299.400. Data collected under this program will be made publicly available in accordance with R645-300-124.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: [~~October 1, 1999~~]2012

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Natural Resources; Oil, Gas and Mining; Coal **R645-303-300** Transfer, Assignment, or Sale of Permit Rights

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35999

FILED: 03/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes standards for coal mine permit transfers, assignments or sale of rights within Utah. This rule is being amended at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment allows a prospective successor operator to engage in coal mining operations under a permit if the party can demonstrate sufficient bond coverage remains in place. This amendment is in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-12

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendment clarifies the Division's ability to approve a prospective successor mining operator if bond coverage remains in place, and no measurable impact is expected to the state cost in such situations.
- ◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules. This amendment clarifies the Division's ability to approve a successor mining operator for an existing permitted coal mine, and therefore no measurable impact on compliance costs is expected for coal mine operators. This amendment is in accordance with Office of Surface Mining regulations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
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:

- ◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 04/25/2012 09:00 AM, Sevier County Admin. Bldg, 250 N Main St, Richfield, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2012

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-303. Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights.****R645-303-300. Transfer, Assignment, or Sale of Permit Rights.**

310. General Information. No transfer, assignment, or sale of rights granted by a permit will be made without the prior written approval of the Division. At its discretion, the Division may allow a prospective successor in interest to engage in coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under R645-303-320, provided that the prospective successor in interest can demonstrate to the satisfaction of the Division that sufficient bond coverage will remain in place.

320. Application Requirements. An applicant for approval of the transfer, assignment, or sale of permit rights will:

321. Provide the Division with an application for approval of the proposed transfer, assignment, or sale including:

321.100. The name and address of the existing permittee and permit number or other identifier;

321.200. A brief description of the proposed action requiring approval; and

321.300. The legal, financial, compliance, and related information required by R645-301-100 for the applicant for approval of the transfer, assignment, or sale of permit rights;

322. Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent; and

323. Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under R645-301-800.

330. Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the Division, within 30 days of the advertisement publication described under R645-303-322.

340. Criteria for Approval. The Division may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor:

341. Is eligible to receive a permit in accordance with R645-300-132 and R645-300-133;

342. Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by R645-301-800; and

343. Meets any other requirements specified by the Division.

350. Notification.

351. The Division will notify the permittee, the successor, commentators, and the Office of its findings.

352. The successor will immediately provide notice to the Division of the consummation of the transfer, assignment, or sale of permit rights.

360. Continued Operation Under Existing Permit. The successor in interest will assume the liability and reclamation responsibilities of the existing permit and will conduct the coal mining and reclamation operations in full compliance with the State Program and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in the R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: [February 6, 2004]2012

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

**Natural Resources; Oil, Gas and
Mining; Coal
R645-400-300
Provisions of State Enforcement**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36000

FILED: 03/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule identifies the procedures for issuance of a cessation order or notice of violation by the Division upon a coal mining operation. This rule is being amended at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This amendment modifies one provision of the rule which pertains to who is notified by the Division of a cessation order of a coal mining operation. This amendment is in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 40-10-22(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. While the amendment modifies the parties notified by the Division of a cessation order, no measurable impact is expected to the state cost for such items.

◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the rule amendment

only affects the Division notification process after issuance of a cessation order.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. The R645 regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules. This rule amendment only affects the Division notification process after a cessation order on a coal mining operation, so coal mining operators should not incur compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no measurable fiscal impact upon businesses from this rule change.

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

NATURAL RESOURCES

OIL, GAS AND MINING; COAL

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:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 04/25/2012 09:00 AM, Sevier County Admin. Bldg, 250 N Main St, Richfield, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2012

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-400. Inspection and Enforcement: Division Authority and Procedures.

R645-400-300. Provisions of State Enforcement.

310. Cessation Orders.

311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:

311.100. Creates an imminent danger to the health or safety of the public; or

311.200. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.

314. When a notice of violation has been issued under R645-400-320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

315.100. The nature of the violation;

315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;

315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and

315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.

317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.

319. Within sixty days after issuing a cessation order, the Division will notify in writing ~~[any person who has been identified under R645-300-148 and R645-301-112.300 and 112.400 as owning or controlling the permittee]~~the permittee, the operator, and any person who has been listed or identified by the applicant, permittee,

or the Division as an owner or controller of the operation, as defined in R645-100-200, that the cessation order was issued and that the person has been identified as an owner or controller.

320. Notices of Violation.

321. The Division will issue a notice of violation if, on the basis of a Division inspection carried out during the enforcement of a State Program it finds a violation of the State Program or any condition of a permit or an exploration approval imposed under the State Program which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310.

322. When on the basis of any Division inspection other than one described in R645-400-321, the Division determines that there exists a violation of the State Program or any condition of a permit or an exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310, the Division will issue a notice of violation to the permittee or his agent fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

323. A notice of violation issued under R645-400-320 will be in writing, signed by the authorized representative of the Division, and will set forth reasonable specificity:

323.100. The nature of the violation;

323.200. The remedial action required, which may include interim steps;

323.300. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

323.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies.

324. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R645-400-327. An extended abatement date pursuant to this section will not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

325. If the permittee fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R645-400-314.

326. The Division will terminate a notice of violation by written notice to the permittee, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Board to assess civil penalties for those violations under R645-401.

327. Circumstances which may qualify a coal mining and reclamation operation for an abatement period of more than 90 days are:

327.100. Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such

permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

327.200. Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

327.300. Where the permittee cannot abate within 90 days due to a labor strike;

327.400. Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

327.500. Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

328. Other information on abatement times extended beyond 90 days.

328.100. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

328.200. If any of the conditions in R645-400-327 exists, the permittee may request the authorized representative of the Division to grant an abatement period exceeding 90 days. The authorized representative will not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted will not exceed the shortest possible time necessary to abate the violation. The permittee will have the burden of establishing by clear and convincing proof that he or she is entitled to any extension under the provisions of R645-400-324 and R645-400-327.

328.300. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative will promptly and fully document in the file his or her reasons for granting or denying the request. The Director or designee of the Director specified in R645-400-328.200 will review this document before concurring in or disapproving the extended abatement date and will promptly and fully document the reasons for his or her concurrence or disapproval in the file.

328.400. Any determination made under R645-400-328.200 or R645-400-328.300 will contain a right of appeal to the Board under R645-400-360.

328.500. No extension granted under R645-400-328.200 or R645-400-328.300 may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of R645-400-328.200.

329. Enforcement actions at abandoned sites. The Division may refrain from using a notice of violation or cessation order for a violation at an abandoned site, as defined in R645-100-200., if abatement of the violation is required under any previously issued notice on order.

330. Suspension or Revocation of Permits.

331. The Board will issue an order to a permittee requiring him or her to show cause why his or her permit and right

to mine under the State Program should not be suspended or revoked, if the Board determines that a pattern of violations of any requirements of the State Program, or any permit condition required by the Act exists or has existed, and that each violation was caused by the permittee willfully or through an unwarranted failure to comply with those requirements or conditions. A finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. Violations by any person conducting coal mining and reclamation operations on behalf of the permittee will be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

332. Pattern of Violation.

332.100. The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12-month period, after considering the circumstances, including:

332.110. The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit; and

332.120. The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit; and

332.130. The extent to which the violations were isolated departures from lawful conduct.

332.200. If after the review described in R645-400-332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she will recommend that the Board issue an order to show cause as provided in R645-400-331.

332.300. The Director will promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the State Program, or the permit during three or more state inspections of the permit area within a 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she will recommend that the Board issue an order to show cause as provided in paragraph R645-400-331.

333. Number of Violations.

333.100. In determining the number of violations within a 12-month period, the Director will consider only violations issued as a result of a state inspection carried out during enforcement of the State Program.

333.200. The Director may not consider violations issued as a result of inspections other than those mentioned in R645-400-333.100 in determining whether to exercise his or her discretion under R645-400-332.100, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

334. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director will review the permittee's history of violations to determine whether a pattern of violations caused by the permittee's willful or unwarranted failure to comply exists pursuant to this section, and will make a recommendation to the Board concerning whether or not an order to show cause should issue pursuant to R645-400-331.

335. Hearing Procedures.

335.100. If the permittee files an answer to the show cause order and requests a hearing, a formal public hearing on the record will be conducted pursuant to the R641 Rules before the Board or at the Board's option by an administrative hearing officer. The hearing officer will be a person who meets minimum requirements for a hearing officer under Utah law. At such hearing the Division will have the burden of establishing a prima facie case for suspension or revocation of the permit based upon clear and convincing evidence. The ultimate burden of persuasion that the permit should not be suspended or revoked will rest with the permittee.

The Board or Officer will give 30 days written notice of the date, time and place of the hearing to the Director, the permittee and any intervenor. Upon receipt of the notice the Director will publish it, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and will post it at the Division office closest to those operations. Upon written request by the permittee, such hearing may at the Board's option be held at or near the mine site within the county in which the permittee's operations are located.

335.200. Within 60 days after the hearing, the Board will prepare a written determination, or the Officer will prepare a written determination to the Board, as to whether or not a pattern of violation exists. If the determination is prepared by the hearing officer, it will be reviewed by the Board which will make the final decision thereon. If the Board finds a pattern of violations and revokes or suspends the permit and the permittee's right to mine under the State Program, the permittee will immediately cease coal mining operations on the permit area and will:

335.210. If the permit and the right to mine under the State Program are revoked, complete reclamation within the time specified in the order; or

335.220. If the permit and the right to mine under the State Program are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

340. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

341. A notice of violation or cessation order will be served on the permittee or his designated agent promptly after issuance, as follows:

341.100. By tendering a copy at the coal exploration or coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the permittee. Service will be complete upon tender of the notice or order and will not be deemed incomplete because of refusal to accept.

341.200. As an alternative to R645-400-341.100, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent. Service will be complete upon tender of the notice or order by mail and will not be deemed incomplete because of refusal to accept.

342. A show cause order may be served on the permittee in either manner provided in R645-400-341.

343. Designation by any person of an agent for service of notices and orders will be made in writing to the Division.

350. Informal Public Hearing.

351. Except as provided in R645-400-352 and R645-400-353 a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, will expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing will be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Division and the permittee. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division. Expiration of a notice or order will not affect the Board's right to assess civil penalties for the violations mentioned in the notice or order under R645-401.

352. A notice of violation or cessation order will not expire as provided in R645-400-351, if the condition, practice or violation in question has been abated or if the informal public hearing has been waived, or if, with the consent of the permittee, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of R645-400-352:

352.100. The informal public hearing will be deemed waived if the permittee:

352.110. Is informed, by written notice served in the manner provided in R645-400-352.200, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

352.120. Fails to request an informal public hearing within that time;

352.200. The written notice referred to in R645-400-352.110 will be delivered to the permittee by an authorized representative or sent by certified mail to the permittee no later than five days after the notice or order is served on the permittee; and

352.300. The permittee will be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

353. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

353.100. The permittee; and

353.200. Any person who filed a report which led to that notice or order.

354. The Division will also post notice of the hearing at the office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

355. An informal public hearing will be conducted by a representative of the Board who may accept oral or written arguments and any other relevant information from any person attending.

356. Within five days after the close of the informal public hearing, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to:

356.100. The permittee; and

356.200. Any person who filed a report which led to the notice or order.

357. The granting or waiver of an informal public hearing will not affect the right of any person to formal review under UCA 40-10-22-(3). At such formal review proceedings, no evidence as to

statements made or evidence produced at an informal public hearing will be introduced as evidence or to impeach a witness.

360. Board Review of Citations.

361. Petition Process.

361.100. A permittee issued a notice of violation or cessation order under R645-400-320 or R645-400-310 or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of the Division's action by filing an application for review and request for hearing pursuant to UCA 40-10-22(3) and the Board's Rules within 30 days after receiving notice of the action.

361.200. Upon written petition by the operator or an interested party, the Board, at its discretion, or a hearing examiner appointed by the Board, pursuant to UCA 40-6-10(6), may be requested to hold a hearing at the site of the operation or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

361.300. The Board will issue an order concerning the cessation order within 30 days after its next regularly scheduled hearing of receipt of the petition for review of the Division's cessation order.

362. The filing of a petition for review and request for a hearing under R645-400-360 will not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

370. Inability to Comply.

371. No cessation order or notice of violation issued under R645-400-300 may be vacated because of inability to comply.

372. Inability to comply may not be considered in determining whether a pattern of violations exists.

373. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R645-401 and of the duration of the suspension of a permit under R645-400-330.

380. Compliance Conference.

381. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-19 or R645-400-100.

382. The Division may accept or refuse any request to conduct a compliance conference under R645-400-381. Where the Division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference will be given to the permittee.

383. The authorized representative at any compliance conference will review such proposed conditions and practices as the permittees may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or of any applicable permit or exploration proposal.

384. Neither the holding of any compliance conference under R645-400-380 nor any opinion given by the authorized representative at such a conference will affect:

384.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

384.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

390. Injunctive Relief.

391. The Division may request the Utah Attorney General's office to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court for the district in which the coal exploration or coal mining and reclamation operation is located or in which the permittee has his principal office, whenever that permittee, in violation of the State Program or any condition of an exploration approval or permit:

391.100. Violates or fails or refuses to comply with any order or decision of the Division under the State Program;

391.200. Interferes with, hinders or delays the Division in carrying out the provisions of the State Program;

391.300. Refuses to admit the Division to a mine;

391.400. Refuses to permit inspection of a mine by the Division;

391.500. Refuses to furnish any required information or report;

391.600. Refuses to permit access to or copying of any required records; or

391.700. Refuses to permit inspection of monitoring equipment.

392. No citizen suits may be brought pursuant to UCA 40-10-21 if the Board, Division or State Attorney General has commenced and is diligently prosecuting a civil action under R645-400-391, however, in any such action in a state court any interested person may intervene as permitted by and in accordance with Rule 24 of the Utah Rules of Civil Procedure.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment:
[November 17, 2000]2012

Notice of Continuation: February 17, 2010

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Natural Resources; Oil, Gas and Mining; Coal **R645-403**

Alternative Enforcement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 36001

FILED: 03/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes alternative enforcement provisions beyond notices of violation and cessation orders

regarding coal mining operations who willfully and knowingly violate or refuse to comply. This rule follows statutory authority as well as 30 CFR 847. This rule is prepared at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule establishes alternative enforcement provisions beyond notices of violation and cessation orders regarding coal mining operations who willfully and knowingly violate or refuse to comply, including pursuit of criminal penalties or civil actions. This rule is in accordance with Office of Surface Mining regulations at 30 CFR 847.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-20 and Section 40-10-22 and Section 40-10-23

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as statutory provisions pertaining to this rule already existed. Occasions where a coal mining permittee knowingly or willfully violates a permit or refuses to comply and criminal penalties or civil actions are to be pursued are also expected to be very rare. Therefore, no measurable impact is expected to the state cost.

◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules, under the statutory authority of Title 40, Chapter 10. Since coal mining permittees were already subject to the statutory provisions concerning alternative enforcement methods identified in this rule, no new costs for such parties are expected from this rule. If Utah did not have state primacy, coal mining companies would need to comply with relevant federal regulations at 30 CFR 847.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No new fiscal impacts upon businesses are expected from this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 OIL, GAS AND MINING; COAL
 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:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 04/25/2012 09:00 AM, Sevier County Admin. Bldg, 250 N Main St, Richfield, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2012

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-403. Alternative Enforcement.

R645-403-100. Provisions for Criminal Penalties and Civil Actions.

110. The rules in R645-403 provide guidance to exercise the authority set forth in UCA 40-10-20(4) through 40-10-20(7), 40-10-22(2), and 40-10-23.

111. Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, the Division must update AVS to reflect the judgment or conviction.

112. The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.

113. Nothing in R645-403 eliminates or limits any additional enforcement rights or procedures available under federal or state law.

120. Under UCA 40-10-20(5) and 40-10-20(7), the Division may request the Utah Attorney General to pursue criminal penalties against any person who:

120.100. Willfully and knowingly violates a condition of the permit;

120.200. Willfully and knowingly fails or refuses to comply with any notice, order or judicial review under R645-400-300, except as described in UCA 40-10-20(5); or

120.300. Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the regulatory program or any order or decision issued by the Division or Board under UCA 40-10-20 through 40-10-22.

121. Criminal proceedings instigated under the authority of R645-403-120 must commence within five years of the date of the alleged violation.

130. Under UCA 40-10-20(4) and 40-10-22(2)(a), the Division may request the Utah Attorney General to pursue civil action against a permittee, or permittee's agent, who:

130.100. Violates or fails or refuses to comply with any order or decision issued by the Division or the Board;

130.200. Interferes with, hinders, or delays the Division or its authorized representatives in carrying out the provisions of the Act or its implementing rules;

130.300. Refuses to admit the Division's authorized representatives onto the site of a coal mining and reclamation operation;

130.400. Refuses to allow the Division's authorized representatives to inspect a coal mining and reclamation operation;

130.500. Refuses to furnish any information or report that the Division requests in furtherance of the provisions of the Act or the regulatory program; or

130.600. Refuses to allow access to, or copying of, those records that the Division determines necessary to carry out the provisions of the Act and its implementing rules.

131. A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order by a state district court for the district in which the coal mining and reclamation operation is located or in which the permittee of the operation has their principal office.

132. Temporary restraining orders will be issued in accordance with Rule 65A of the Utah Rules of Civil Procedure, as amended.

133. Any relief the court grants to enforce an order under R645-403-131 will continue in effect until completion or final termination of all proceedings for review of that order under the Act or its implementing rules unless, beforehand, the Utah Supreme Court or district court granting the relief on review grants a stay of enforcement or sets aside or modifies the order.

KEY: reclamation, coal mines, enforcement

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: 40-10-20, 40-10-22, 40-10-23

Public Safety, Fire Marshal R710-4-3 Amendments and Additions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36022

FILED: 04/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 03/13/2012, in a regularly scheduled Board meeting and voted by motion to amend Section R710-4-3 to allow secondary schools to take half of the required fire drills each year and use them for other required drills such as shelter in place, earthquake drill, or lock down for violence.

SUMMARY OF THE RULE OR CHANGE: The following amendments are proposed as listed: 1) in Subsection R710-

4-3(3.1.1(e)), the Board proposes to modify an existing footnote in the 2009 International Fire Code, and allow secondary schools to use half of the required fire drills for other purposes. Currently, a secondary school is required to have four emergency evacuation fire drills per school year. The Board proposes to allow secondary schools to use the second and fourth evacuation drill for other required drills such as shelter in place, earthquake drill or lock down for violence; and 2) in Subsection R710-4-3(3.1.1(f)), the Board proposes to remove the approval of the Authority Having Jurisdiction (AHJ) and changed the word "can" to "may".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-7-204(1)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this just changes the type of drill and does not require a further cost for compliance.

◆ **LOCAL GOVERNMENTS:** There is no aggregate cost or savings to local government because this proposed amendment does not affect local government.

◆ **SMALL BUSINESSES:** There is no aggregate cost or savings to small businesses because this proposed amendment does not affect small businesses and only affects secondary schools.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to other persons because this just changes the type of drill allowed and does not require additional costs to implement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because the proposed amendment allows the school district to decide if they wish to substitute other required drills for the required fire drills. This allows for all types of drills to be rehearsed and does not further affect the time commitment for teaching and studies in the secondary schools.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses for the enactment of this proposed rule amendment.

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

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Brent Halladay, State Fire Marshal

R710. Public Safety, Fire Marshal.

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

R710-4-3. Amendments and Additions.

3.1 Fire Drills

3.1.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

e. Secondary schools in Group E occupancies shall have an emergency evacuation drill for fire conducted at least every two months, to a total of four emergency evacuation drills during the nine-month school year. The first emergency evacuation drill for fire shall be conducted within 10 school days of the beginning of classes, and the third emergency evacuation drill for fire shall be conducted within 10 school days after the beginning of the next calendar year. The second and fourth emergency evacuation drills may be substituted by a security or safety drill to include shelter in place, earthquake drill or lock down for violence.

f. In Group E occupancies, excluding secondary schools, ~~if the AHJ approves,~~ the monthly required emergency evacuation drill ~~can~~ may be substituted by a security or safety drill to include shelter in place, earthquake drill or lock down for violence. The routine emergency evacuation drill for fire must be conducted at least every other evacuation drill.

g. A-3 occupancies in academic buildings of institutions of higher learning are required to have one emergency evacuation drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.
2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.
3. The building is not classified a high-rise building.
4. The building does not contain hazardous materials over the allowable quantities by code.

3.2 Door Closures

3.2.1 IFC, Chapter 7, Section 703.2. Add the following: Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors with a rating of 20 minutes or less only.

3.3 Fire Protection Systems

3.3.1 IFC, Chapter 9, Section 903.2.8 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

3.3.2 Water Supply Analysis

3.3.2.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an

engineer's water supply analysis evaluating the available water supply.

3.3.2.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.3.2.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Annex A.15.2.1.

3.3.3 Fire Alarm Systems

3.3.3.1 Required Installations

3.3.3.1.1 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.3.1.1.1 Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 5.3.

3.3.3.1.1.2 Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

3.3.3.1.1.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.3.2 Main Panel

3.3.3.2.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.3.3 System Wiring, Class and Style

3.3.3.3.1 Fire alarm system wiring shall be designated and installed as follows:

3.3.3.3.1.1 The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.2 The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.3 Signaling line circuits shall be designated and installed Style 6 or 7 as defined in NFPA, Standard 72.

3.3.3.4 Fan Shut Down

3.3.3.4.1 Fan shut down shall be as required in IMC, Chapter 6, Section 606.

3.3.3.4.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.3.5 Nuisance Alarms

3.3.3.5.1 IFC, Chapter 9, Section 907.9.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

3.4 Time Out and Seclusion Rooms

3.4.1 Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

3.4.2 A vision panel shall be provided in the room door for observation purposes.

3.4.3 Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.

3.4.4 Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

KEY: fire prevention, public buildings

Date of Enactment or Last Substantive Amendment:
[September 7, 2010] May 22, 2012

Notice of Continuation: June 8, 2007

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal
R710-10-5
Fire Service Standards and Training
Council

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 36023
FILED: 04/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 03/13/2012, the Utah Fire Prevention Board met in a regularly scheduled Board meeting and voted by motion to amend Section R710-10-5, to remove a specific representative from the membership of the Fire Service Standards and Training Council and replace the representative with another representative.

SUMMARY OF THE RULE OR CHANGE: In Subsection R710-10-5(5.2.9), the Board proposes to remove the representative from the Fire Service Standards and Training Council that represented the Advanced Life Support (ALS) provider from Emergency Medical Services (EMS) and replace that representative with a representative from the Utah Fire and Life Safety Education Association. The Board felt that it has little to do with EMS in its responsibilities, and it would be better representation to replace that representative with a person from the Utah Fire and Life Safety Education Association, since that is one of the Board's specific mandates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-7-204(1)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this proposed amendment just replaces one representative with another.

♦ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because this proposed amendment does not affect local government in any way.

♦ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this proposed amendment affects a government council and has nothing to do with small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to other persons because this changes the membership of the Fire Service Standards and Training Council from one representative to another and does not affect other persons in an aggregate form.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons because this proposed amendment substitutes one representative from one organization to another representative and has no compliance cost to do so.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses for the enactment of this rule amendment. This proposed rule amendment does not affect businesses.

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

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Brent Halladay, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.

R710-10-5. Fire Service Standards and Training Council.

5.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

5.2 The Standards Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve four year terms, and shall consist of the following members:

5.2.1 Representative from the Utah State Fire Chiefs Association.

5.2.2 Representative from the Utah State Firemen's Association.

5.2.3 Representative from the Fire Marshal's Association of Utah.

5.2.4 Specialist in hazardous materials representing the Hazardous Materials Institute.

5.2.5 Fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

5.2.6 Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

5.2.7 Representative from the International Association of Firefighters.

5.2.8 Representative from the Utah Fire Service Certification Council.

5.2.9 Representative from the ~~[fire service that is an Advanced Life Support (ALS) provider to represent Emergency Medical Services]~~ Utah Fire and Life Safety Education Association.

5.2.10 Representative from the Utah Fire Training Officers Association.

5.3 The Standards Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. A majority of the Standards Council members shall be present to constitute a quorum.

5.4 The Standards Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

5.5 If a Standards Council member has two or more unexcused absences during a 12 month period, from regularly scheduled Standards Council meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the Standards Council member to the Board for status review.

5.6 A member of the Standards Council may have a representative of their respective organization sit in proxy of that member, if submitted and approved by the Coordinator prior to the meeting.

5.7 The Chair or Vice Chair of the Standards Council shall report to the Board the activities of the Standards Council at regularly scheduled Board meetings. The Coordinator may report

to the Board the activities of the Standards Council in the absence of the Chair or Vice Chair.

5.8 The Standards Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

5.9 One-half of the members of the Standards Council shall be reappointed or replaced by the Board every two years.

KEY: fire training

Date of Enactment or Last Substantive Amendment: ~~[May 11, 2011]~~ May 22, 2012

Authorizing, and Implemented or Interpreted Law: 53-7-204

**Regents (Board of), University of Utah,
Commuter Services**

R810-2

Parking Meters

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35968

FILED: 03/22/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It was determined by Commuter Services Administration that University vehicles were occupying load zone meters for long durations of time preventing visiting patrons from this access.

SUMMARY OF THE RULE OR CHANGE: Changed language to reflect that University vehicles are not permitted to park in load zone meters.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-3-103 and Section 53B-3-107

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There may be minor revenue generated through parking meters but not enough to properly forecast and budget accordingly.

♦ **LOCAL GOVERNMENTS:** There should be no impacts to local government budgets because load zone meters on our campus have no relevance to their situation.

♦ **SMALL BUSINESSES:** There should be no impacts to small business budgets because load zone meters on our campus have no relevance to small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There should be no impacts because load zone meters on our campus have no relevance to outside entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Section R810-2-1 adds "University vehicles are not authorized at load zone meters." There may be additional revenue generated from load zone meters.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I see no fiscal impact on business.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Patti Trulli Ibsen by phone at 801-587-9883, by FAX at 801-581-5253, or by Internet E-mail at patti.trulli-ibsen@ucs.utah.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: David Pershing, President

R810. Regents (Board of), University of Utah, Commuter Services.

R810-2. Parking Meters.

R810-2-1. Parking Meters.

Payment for the use of meters is required whether or not the vehicle displays a current University permit.

Parking at a broken meter is restricted to the time shown on the meter. Parking in a metered space for a continuous period longer than that designated on the meter or at an expired meter is prohibited. Enforcement hours for University parking meters are 8 a.m. to 6 p.m. Monday through Friday, or from 9:00 a.m. to 10:00 p.m. Monday through Friday where posted. University vehicles are not authorized at load zone meters.

KEY: parking facilities

Date of Enactment or Last Substantive Amendment: ~~March 6, 2008~~ **2012**

Notice of Continuation: February 17, 2012

Authorizing, and Implemented or Interpreted Law: 53B-3-103; 53B-3-107

**Regents (Board of), University of Utah,
Commuter Services
R810-5
Permit Types, Eligibility and Designated
Parking Areas**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35966

FILED: 03/22/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It was determined by Commuter Services Administration that the amount of construction and construction vehicles on campus required the addition of the word "contractors" to the list of regular patrons required to have parking permits.

SUMMARY OF THE RULE OR CHANGE: Changed language to reflect that construction vehicles must display valid permits to park on campus.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-3-103 and Section 53B-3-107

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no projected effects on the state budget due to the fact the procedure has always been in place but the written rules needed to reflect the policy.

♦ LOCAL GOVERNMENTS: There are no projected effects on local government budgets due to the fact the procedure has always been in place but the written rules needed to reflect the policy.

♦ SMALL BUSINESSES: There are no projected effects on small business budgets due to the fact the procedure has always been in place but the written rules needed to reflect the policy.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no projected effects due to the fact the procedure has always been in place but the written rules needed to reflect the policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Section R810-5-1 adds "and contractors" to the list of vehicle owners who need to pay for parking. This procedure has always been on place but was not written in the rules. Because the process is already in motion there should be no additional costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I see no fiscal impact on business.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: David Pershing, President

R810. Regents (Board of), University of Utah, Commuter Services.

R810-5. Permit Types, Eligibility and Designated Parking Areas.

R810-5-1. Parking Permits and Permit Parking Areas.

Except for pay lots, parking meters, short term loading areas and parking reserved for clinical patients, all faculty, staff, students, visitors, ~~and~~ vendors, and contractors must purchase and display a current University of Utah parking permit.

Ownership of University parking permits is non-transferable.

All permit parking areas are designated by signage at the lot's entrance. Parking is subject to change without notice.

R810-5-2. Permit Classifications.

Eligibility and designated parking areas are as follows:

A. Faculty and Staff Permits. Only one permit shall be available to each qualified faculty or staff member. The permit holder may park in any faculty/staff or student parking area. Persons eligible are:

1. All full time salaried personnel, 75 percent full time equivalent.
2. Faculty approved by the academic vice president.
3. Other personnel as designated by the University administration.

B. Health Science Center Faculty and Staff Permits. Only one permit shall be available to each qualified faculty or staff member. The permit holder may park in the designated parking garage or other surface faculty/staff or student lot. Persons eligible are the same as R810-5-2A.1,2 and 3 as listed above.

C. Reserved Permits. Issued to full time faculty and staff who lease one specific space. The permit holder may also park in any faculty/staff or student parking area except the Health Science Center parking garages. Unauthorized vehicles in reserved stalls may be impounded without notification. A reserved stall permit

holder may not park in another permitted area on campus if another vehicle occupies the reserved space.

D. Student Permits. Issued to students, faculty and staff. The permit holder may park in the designated student parking lots.

E. Disabled Permits. Issued to qualified drivers with disabilities. Applicants must qualify under state statutes that govern parking for the disabled. Persons bringing individuals with disabilities to campus are not entitled to disabled parking privileges.

Other permits may be issued from time to time by University Commuter Services to control parking areas.

KEY: parking facilities

Date of Enactment or Last Substantive Amendment: [~~March 6, 2008~~]2012

Notice of Continuation: February 17, 2012

Authorizing, and Implemented or Interpreted Law: 53B-3-103; 53B-3-107

Regents (Board of), University of Utah,
Commuter Services
R810-8
Vendor Regulations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35969

FILED: 03/22/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It was determined by Commuter Services administration that the last sentence of Section R810-8-1 sounded repetitive.

SUMMARY OF THE RULE OR CHANGE: Four words from sentence were deleted, "being serviced by vendors".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-3-103 and Section 53B-3-107

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated budget implications since the rule only states authority of parking regulations.

♦ **LOCAL GOVERNMENTS:** There are no anticipated budget implications since the rule only states authority of parking regulations.

♦ **SMALL BUSINESSES:** There are no anticipated budget implications since the rule only states authority of parking regulations.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated budget implications since the rule only states authority of parking regulations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an additional compliance cost due to deletion of text within the rule. The rule simply does not authorize departments on campus to dictate parking related issues without Commuter Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I see no fiscal impact on business.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: David Pershing, President

R810. Regents (Board of), University of Utah, Commuter Services.

R810-8. Vendor Regulations.

R810-8-1. Parking Options for Vendors and Sales Representatives.

Vendors and sales representatives may:

A. Obtain a vendor permit from Commuter Services. The permit is for business use only and not for attending classes or for all-day parking.

B. Purchase a day pass.

C. Park in a pay lot and pay the appropriate fee.

D. Park at a meter and pay the appropriate fee.

E. Park in a twenty-minute delivery and loading zone.

1. Vendors are required to obey University parking regulations. Departments [~~being serviced by vendors~~] do not have the authority to exempt vendors from parking regulations.

KEY: parking facilities

Date of Enactment or Last Substantive Amendment: [~~March 6, 2008~~]**2012**

Notice of Continuation: October 5, 2007

Authorizing, and Implemented or Interpreted Law: 53B-3-103; 53B-3-107

**Regents (Board of), University of Utah,
Commuter Services
R810-11
Appeals System**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35964

FILED: 03/22/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It was determined by Commuter Services Administration that text regarding small claims affidavit was unnecessary. It was also determined that text should state that appeals cannot be made by phone.

SUMMARY OF THE RULE OR CHANGE: Text regarding small claims affidavit removed. Text regarding that appeals cannot be made over phone added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-3-103 and Section 53B-3-107

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no projected effects on the state budget due to the fact the change in this rule only affects the procedure for filing a parking appeal.

♦ LOCAL GOVERNMENTS: There are no projected effects on any local government budget due to the fact the change in this rule only affects the procedure for filing a parking appeal.

♦ SMALL BUSINESSES: There are no projected effects on small business budgets due to the fact the change in this rule only affects the procedure for filing a parking appeal.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no projected effects due to the fact the change in this rule only affects the procedure for filing a parking appeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Section R810-11-1 stipulates that an appeal for a parking ticket can only be submitted until a small claims affidavit has been filed. The agency is suggesting that that sentence be deleted because we no longer file small claims petitions and because the Attorney General's Office has told us we cannot arbitrarily set a date that takes away a person's right to appeal a fine. Therefore, there are no unforeseen compliance costs of amending the text of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I see no fiscal impact on business.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Alma Allred, Director

R810. Regents (Board of), University of Utah, Commuter Services.

R810-11. Appeals System.

R810-11-1. Appealing Parking Tickets.

1. First Level Appeals. Ticket appeals must be made to the Appeals Office in person, by fax, in writing or by email [~~up to the time a small claims affidavit has been filed~~]. Appeals may not be made over the phone.

2. Second Level Appeals. The decision of the Appeals officer may be appealed to the Campus Parking Ticket Appeals Committee after the ticket has been paid.

KEY: parking facilities

Date of Enactment or Last Substantive Amendment: [~~March 6, 2008~~2012]

Notice of Continuation: February 17, 2012

Authorizing, and Implemented or Interpreted Law: 53B-3-103; 53B-3-107

Workforce Services, Employment
Development
R986-900-902
Options and Waivers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35993

FILED: 03/29/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to list state exemptions and to disallow voluntary participation.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment is to list the exemptions chosen by Utah for food stamp customers' need to participate in Employment and Training and to disallow voluntary participation and the work reimbursement. The program has not been effective in returning people to work and is expensive to administer.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-103 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local governmental entities to comply with these changes because this is a federally-funded program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs to persons to comply with these changes because there are no costs or fees associated with these proposed changes. Eligible food stamp recipients will no longer receive \$50 for work reimbursements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes. There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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 by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2012

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.**R986-900. Food Stamps.****R986-900-901. Authority for Food Stamps and Applicable Rules.**

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: <http://www.fns.usda.gov/fsp/>. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available on the Department's Internet web site. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted otherwise.

R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer

does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(l) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(m) The Department has opted to align food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(n) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(o) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving food stamps and FEP or FEPTP, must participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

(p) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(q) The Department allows the following exemptions from the Employment and Training (E and T) program for individuals who:

(i) are Refugee Cash Assistance (RCA) participants;

(ii) are on a temporary layoff from their place of employment;

(iii) are unemployed for less than 6 months;

(iv) live more than 35 miles from an employment center;

(v) lack child care, either because it is not available or the customer is not eligible for child care assistance;

(vi) are not appropriate for E & T as determined by a manager or designee;

(vii) are age 47 through the month of their 60th birthday;

(viii) are low functioning/have developmental disabilities/are socially dysfunctional and who have obvious functional limitations that are a substantial handicap to employment;

(ix) have current domestic violence issues;

(x) have limited language skills or individuals whose primary language is other than English;

(xi) lack public and/or private transportation;

(xii) are in the application or appeals process for SSI;

(xiii) work 80 hours a month regardless of the amount earned;

(A) if the individual is working less than 80 hours a month but is making at least minimum wage times 80 hours per month, the individual is considered to be meeting the 80 hours per month exemption

(B) if an individual is self-employed and working less than 80 hours a month, the gross income before expenses must be minimum wage times 80 hours a month. An individual working but being paid in-kind does not meet this exemption.

(xiv) have no fixed address;

(xv) do not have a GED or high school diploma;

(xvi) are pregnant regardless of trimester;

(xvii) are on probation or parole who are required to complete court ordered activities such as work release and drug court; or

(xvii) are participating in a program with a Department partner such as case management by Vocational Rehabilitation, or are participating in a Title V or Choose to Work program.

(r) Beginning July 1, 2012, individuals who meet the requirements of an exemption will no longer be allowed to receive services on a voluntary basis or receive a work reimbursement.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over \$25 or a change in the source of unearned income.

(c) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(d) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(e) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(f) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(g) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(h) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(i) The Department will hold disqualification hearings by telephone.

(j) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(k) The federal regulation that requires all interviews be scheduled for a specific date and time is waived for initial telephone interviews. This allows clients to call anytime Monday through Thursday from [7]8 a.m. to 5[30] p.m. to complete the required initial interview.

(l) To meet the student work exemption, a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The work hours must be averaged over the 30 days immediately prior to the date of application or recertification.

KEY: food stamps, public assistance

Date of Enactment or Last Substantive Amendment: ~~July 1, 2010~~2012

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-103

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Commerce, Consumer Protection **R152-6** Utah Administrative Procedures Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35974
FILED: 03/26/2012

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 13-2-5(1) grants the Division Director the authority to issue rules to administer and enforce consumer protection statutes. Subsection 63G-4-202(1) allows state agencies to designate by administrative rule categories of adjudicative proceedings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The administrative rule is necessary in order for the Division to continue conducting informal adjudicative proceedings.

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

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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Traci Gundersen, Director

EFFECTIVE: 03/26/2012

Commerce, Consumer Protection **R152-15** Business Opportunity Disclosure Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35965
FILED: 03/22/2012

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 13-2-5(1) provides the Division Director the authority to issue rules to administer and enforce the Business Opportunity Disclosure Act. Subsection 13-15-4.5(3) provides that the Division may make rules to implement the section.

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 were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the administrative rule is necessary for the Division to administer and enforce the Business Opportunity Disclosure Act and establishing the fee structure required by Section 13-15-4.

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

COMMERCE
 CONSUMER PROTECTION
 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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Traci Gundersen, Director

EFFECTIVE: 03/22/2012

**Commerce, Consumer Protection
 R152-20
 New Motor Vehicle Warranties**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35967
 FILED: 03/22/2012

**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 13-2-5(1) grants the Division Director authority to issue rules to administer and enforce the New Motor Vehicles Warranties Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule is necessary in order

for the Division to fulfill its statutory mandate to administer and enforce the New Motor Vehicles Warranties Act.

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

COMMERCE
 CONSUMER PROTECTION
 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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Traci Gundersen, Director

EFFECTIVE: 03/22/2012

**Commerce, Consumer Protection
 R152-22
 Charitable Solicitations Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35970
 FILED: 03/22/2012

**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 13-2-5(1) grants the Division Director authority to issue rules to administer and enforce the Charitable Solicitations Act. Section 13-22-6 provides that the Division may establish registration requirements by administrative rule. Subsection 13-22-8(4) provides that the Division may establish by administrative rule the filing requirements and fees for organizations exempt from registration. Section 13-22-9 provides that the Division may establish by administrative rule the application requirements for professional fund raisers, fund raising counsels, and fund raising consultants.

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 were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule is necessary for the

Division to fulfill its statutory mandate to administer and enforce the Charitable Solicitations Act. The administrative rule is essential to effective implementation of the registration requirements of the Charitable Solicitations Act.

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

COMMERCE
CONSUMER PROTECTION
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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Traci Gundersen, Director

EFFECTIVE: 03/22/2012

Commerce, Consumer Protection
R152-23
Utah Health Spa Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35971
FILED: 03/22/2012

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 13-2-5(1) grants the Division Director authority to issue rules to administer and enforce the Utah Health Spa Services Act. Subsection 13-23-5(1)(a)(iii) requires the Division to provide by rule for the form, content, application process and renewal process of health spa registration.

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 were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the administrative rule is necessary for the Division to administer and enforce the Utah Health Spa Services Act. The administrative rule is required

in order for the Division to implement the registration requirement of the Utah Health Spa Services Act.

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

COMMERCE
CONSUMER PROTECTION
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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Traci Gundersen, Director

EFFECTIVE: 03/22/2012

Commerce, Consumer Protection
R152-42
Uniform Debt-Management Services
Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35972
FILED: 03/22/2012

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 13-2-5(1) grants the Division Director authority to issue rules to administer the Uniform Debt-Management Services Act. Subsection 13-42-112(2) requires the Division to make rules designating the states in which a debt-management provider may have a license or certificate that may be submitted to meet the registration requirements of the Uniform Debt-Management Services Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the administrative rule is necessary for the Division to administer and enforce the

Uniform Debt-Management Services Act. The administrative rule is required in order for the Division to recognize the registration of debt-management providers registered in reciprocal states.

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

COMMERCE
 CONSUMER PROTECTION
 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:

◆ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Traci Gundersen, Director

EFFECTIVE: 03/22/2012

**Environmental Quality, Solid and
 Hazardous Waste
 R315-304**

**Industrial Solid Waste Landfill
 Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 35988
 FILED: 03/29/2012

**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 19-6-104(1)(j) requires the Solid and Hazardous Waste Control Board to require any facility disposing of nonhazardous waste to submit plans, specifications, and other information required by the Board prior to the construction and/or operation of a facility. Subsection 19-6-108(12) requires that operation plans be reviewed every five years. The rule sets out the procedures and information that must be submitted to review a plan approval and meet the requirements of the statute.

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 changes or public comments were received on this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to implement the requirements of the statute to review plans for facilities that dispose of nonhazardous solid waste. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
 ◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmercer@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 03/29/2012

**Governor, Economic Development,
 Pete Suazo Utah Athletic Commission
 R359-1
 Pete Suazo Utah Athletic Commission
 Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36002
 FILED: 03/30/2012

**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 63C, Chapter 11 (Pete Suazo Utah Athletic Commission Act), Section 318 provides the Pete Suazo Utah Athletic Commission (PSAUC) with the authority to make rules governing the conduct of unarmed combat contests held under this chapter to protect the health and safety of licensees and members of the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: The commission has not received any written comments over the past five years supporting or opposing the rule. We have received a handful of comments supporting or opposing specific proposed rule amendments that have been implemented over the past five years. These comments have been considered by the Pete Suazo Utah Athletic Commission (PSUAC) in considering any rule amendments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is in place to provide additional guidance to licensed promoters, unarmed combat contestants and other licensees. The rule is in place to help protect the health, safety and welfare of licensees and public and promote the integrity of unarmed combat sports. The rule complies with the requirements of Pub. L. 106-210, the "Muhammad Ali Boxing Reform Act" which requires state athletic commissions to govern professional boxing within their jurisdictions. Therefore, this rule should be continued.

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

GOVERNOR
ECONOMIC DEVELOPMENT,
PETE SUAZO UTAH ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

AUTHORIZED BY: Bill Colbert, Director

EFFECTIVE: 03/30/2012

**Health, Disease Control and
Prevention, Environmental Services
R392-502
Hotel, Motel and Resort Sanitation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 36017
FILED: 04/02/2012**

**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 Subsection 26-1-30(2). Subsection 26-1-30(2)(u) authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of lodging houses and hotels.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule was last updated in August 2008 to address comments received regarding allowing pets in hotels/motels. The issue was addressed in the rule, and conditions were set where pets can be allowed if the facility meets certain conditions. Since the modifications to the rule have been enacted, the UDOH has not received comments indicating a need to revise this rule. The agency has received comments from local health departments indicating the need to continue statewide enforcement of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: With hotel/motel occupancy rates increasing and more public lodging being built every year, the need for regulation of these facilities continues to be important. Many stories in the national television news and news magazines have highlighted the problems with cleaning of hotel rooms and infestations of bed bugs. Travelers have become more aware of the potential for problems and thus are scrutinizing the rooms they are staying in more than ever. Regulations that require a minimum level of sanitation at Utah lodging are very important to the health of the traveling public. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/02/2012

**Health, Disease Control and
Prevention, Environmental Services
R392-510
Utah Indoor Clean Air Act**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36019
 FILED: 04/02/2012

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 rule is authorized by Section 26-15-12. The chapter requires the department to adopt rules to implement the Utah Indoor Clean Air 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: The Bureau of Epidemiology, UDOH Tobacco Program, and the Environmental Sanitation Program have received comments in support of the continuation of the rule, and comments indicating the need to revise the rule to address emerging trends in smoking practices in the state including use of tobacco in hookah devices and electronic cigarettes. UDOH received comments both for revision of the rule to address health concerns from the use of heated tobacco in hookah apparatuses, and also received comments against revision citing studies which indicate less second hand smoke from hookahs than from cigarettes, and the economic impact of closing small businesses associated with tobacco hookah use. UDOH did revise the rule to keep hookah use out of places of public access. The issue was subsequently handled by the Utah 2012 legislature, and a bill passed restricting e-cigarettes and hookah use statewide. A five-year exemption for two businesses which provide hookah apparatus for tobacco smoking was allowed in the revised statute. UDOH is in the process of revising the rule to meet the new statutory requirements.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes requirements and standards for the implementation of the Utah Indoor Clean Air Act. Secondhand smoke has been implicated in premature death and disease in children and adults who do not smoke. This rule is important because it protects the public from being exposed to the health effects of second hand smoke in places of public access. Children exposed to second hand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems and more severe cases of asthma. Adults exposed to second hand smoke experience have immediate adverse effects on their cardiovascular systems. Second hand smoke has also been linked to coronary heart disease and lung cancer. Scientific evidence indicates that there is no risk-free level of exposure to second hand smoke. Continuation of this rule is important to protect public health in Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/02/2012

**Health, Family Health and Preparedness, Licensing
 R432-31
 Life with Dignity Order**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35976
 FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING

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

SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/28/2012

EFFECTIVE: 03/28/2012

Health, Family Health and Preparedness, Licensing
R432-40

Health, Family Health and Preparedness, Licensing
R432-150
Nursing Care Facility

Long-Term Care Facility Immunizations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35978
FILED: 03/28/2012

DAR FILE NO.: 35977
FILED: 03/28/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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, is the health code that mandates the licensing of health facilities.

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, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
CANNON HEALTH BLDG
288 N 1460 W

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/28/2012

**Health, Family Health and Preparedness, Licensing
R432-151
Mental Disease Facility**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35979
FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/28/2012

**Health, Family Health and Preparedness, Licensing
R432-152
Mental Retardation Facility**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35980
FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/28/2012

EFFECTIVE: 03/28/2012

Health, Family Health and Preparedness, Licensing
R432-200

Small Health Care Facility (Four to Sixteen Beds)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35981
FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

Health, Family Health and Preparedness, Licensing
R432-201

Mental Retardation Facility:
Supplement "A" to the Small Health Care Facility Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35982
FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

AUTHORIZED BY: David Patton, Executive Director

EFFECTIVE: 03/28/2012

EFFECTIVE: 03/28/2012

Health, Family Health and Preparedness, Licensing
R432-300

Small Health Care Facility - Type N

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35983

FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
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DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

Health, Family Health and Preparedness, Licensing
R432-650

End Stage Renal Disease Facility Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35984

FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

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REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, Executive Director

EFFECTIVE: 03/28/2012

EFFECTIVE: 03/28/2012

Health, Family Health and Preparedness, Licensing
R432-700

Home Health Agency Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35985

FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

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HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

Health, Family Health and Preparedness, Licensing
R432-750
Hospice Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35986

FILED: 03/28/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/28/2012

Health, Family Health and Preparedness, Licensing

R432-950

Mammography Quality Assurance

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35987
FILED: 03/28/2012

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, is the health code that mandates the licensing of health facilities.

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REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/28/2012

Natural Resources; Forestry, Fire and State Lands

R652-1

Definition of Terms

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36005
FILED: 04/02/2012

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 implements Subsection 65A-1-4(2) which authorizes the Division to provide definitions which apply to all rules promulgated by the division unless otherwise provided.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines terms which are found in the Division rules. The rule provides clear and concise understanding for terms found throughout all the Division rules. It is necessary for terms to be defined for a clear understanding. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

Natural Resources; Forestry, Fire and
State Lands

R652-3

Applicant Qualification and Application
Forms

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36006
FILED: 04/02/2012

**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 implements Section 65A-6-2 and Section 65A-7-1 which authorize the Division to prescribe the applicant requirements and application form.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule complies with statute by clarifying applicant qualifications for lease or permit with the division, clarifies the application designated form process and the application processing. The provisions in this rule are effective in providing requirements, procedures and standards the Division requires for the application process for the management of state lands. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

Natural Resources; Forestry, Fire and
State Lands

R652-4

Application Fees and Assessments

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36007
FILED: 04/02/2012

**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 implements Subsection 65A-1-4-(2) which authorizes the Division to adopt rules necessary to fulfill the purposes of Title 65A.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule authorizes the Division to establish a fee schedule and establishes that a copy of the fee schedule is available at the Division. A fee schedule is necessary for the Division to outline the fees required for process. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

Natural Resources; Forestry, Fire and State Lands

R652-5

Payments, Royalties, Audits and Reinstatements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36008
FILED: 04/02/2012

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 implements Subsection 65A-1-4(2) which authorizes the Division to adopt rules necessary to fulfill Title 65A.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides clarification with regard to payments, royalties, or other financial obligation owed under the terms of a lease, permit or any other agreement. This rule clarifies financial responsibility on contracts and payment due date procedure. This rule also defines the procedure for cancellation for non-payment. This rule defines procedures for audit and also for reinstatement of a lease or permit. The provisions in this rule are effective in providing the requirements, procedures and standards the Division must adhere to with regard to payment, royalties, audits and reinstatements. Therefore, this rule should continue.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

Natural Resources; Forestry, Fire and State Lands

R652-6

Government Records Access and Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36018
FILED: 04/02/2012

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 Sections 63G-2-204, 63G-2-603, 63A-12-104, 65A-1-10, and 65A-6-7. This rule provides procedures for appropriate access to Division records.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides procedure for appropriate access to division records. The provisions in this rule are effective in providing the requirements, procedures, and standards for records access. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

**Natural Resources; Forestry, Fire and
State Lands
R652-20
Mineral Resources**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36009

FILED: 04/02/2012

**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 implements Section 65A-6-2 which authorizes the Division to establish rules for the issuance of mineral leases and management of state owned lands and mineral resources.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the procedure for issuance of a mineral lease along with the royalty rates on the substances. This rule provides for lease provisions, mineral development areas designation, bonding, mineral lease sites within the State of Utah and other administrative procedures with regard to mineral leasing. The provisions in this rule are effective in providing the requirements, procedures, and standards for the management of state owned lands and mineral resources. Therefore, this rule should continue.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

**Natural Resources; Forestry, Fire and
State Lands
R652-30
Special Use Leases**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36010

FILED: 04/02/2012

**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 implements Section 65A-7-1 which authorizes the Division to prescribed standards and conditions for the leasing and development of surface resources on state 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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes and clarifies the standards and conditions for the development and leasing of surface resources on state lands. This rule specifies lease rates, term, and application procedure. This rule also provides lease provisions and administrative processes and procedure for surface leases. Therefore, this rule should continue.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

**Natural Resources; Forestry, Fire and State Lands
R652-40
Easements**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36011
FILED: 04/02/2012

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 implements Section 65A-7-8 which authorizes the Division to establish rules for issuance of easements on, through, and over any sovereign land and to establish price schedules for this use.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedure for the issuance of easements on sovereign lands. This rule clarifies the application, required documentation, minimum charge, terms of the easement and the administrative procedure and process. The provisions in this rule are effective in providing the requirements, procedures, and standards for managing easements on sovereign lands. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

**Natural Resources; Forestry, Fire and State Lands
R652-50
Range Management**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36012
FILED: 04/02/2012

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 implements Section 65A-9-2 which authorizes the Division to establish rules prescribing standards and conditions for the utilization of forage and related development of range resources on sovereign 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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards and conditions for grazing rights upon sovereign lands. This rule establishes and clarifies the procedure for a grazing permit, the fees associated with the permit and the terms and conditions for grazing upon sovereign lands. The provisions in this rule are effective in providing the requirements, procedures, and standards for range management on sovereign lands. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

**Natural Resources; Forestry, Fire and
 State Lands
 R652-60
 Cultural Resources**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 36013
 FILED: 04/02/2012

**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 implements Subsection 65A-2-2(1) which authorizes the Division of Forestry, Fire and State Lands to prescribe the management of cultural resources on sovereign 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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the manner by which the division shall, pursuant to Section 9-8-404, take into account the effect of sovereign land uses on any district, site, building, structure or specimen that is included in or eligible for inclusion in the State Register or National Register of Historic Places, and allows the State Historic Preservation Officer a reasonable opportunity to comment with regard to the undertaking. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 FORESTRY, FIRE AND STATE LANDS
 1594 W NORTH TEMPLE
 SUITE 3520

SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

**Natural Resources; Forestry, Fire and
 State Lands
 R652-70
 Sovereign Lands**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 36014
 FILED: 04/02/2012

**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 implements Article XX of the Utah Constitution, and Section 65A-10-1. This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds

of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. Therefore, this rule should be continued.

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

NATURAL RESOURCES
 FORESTRY, FIRE AND STATE LANDS
 1594 W NORTH TEMPLE
 SUITE 3520
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

Natural Resources; Forestry, Fire and State Lands
R652-90

Sovereign Land Management Planning

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36015
 FILED: 04/02/2012

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 implements Sections 65A-2-2 and 65A-2-4 which require that planning procedures be developed for sovereign lands, and for the opportunity for the public to participate in the planning process.

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the planning procedures for natural and cultural resources on sovereign land as required by law. These procedures establish comprehensive land-management policies using multiple-use, sustained-yield principles in order to make the interest of the beneficiary paramount. This rule establishes that management plans shall guide the implementation of stated management objectives, and provide direction for land-use decisions and activities on sovereign lands. Therefore, this rule should be continued.

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

NATURAL RESOURCES
 FORESTRY, FIRE AND STATE LANDS
 1594 W NORTH TEMPLE
 SUITE 3520
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

Natural Resources; Forestry, Fire and State Lands
R652-100
Materials Permits

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36016
 FILED: 04/02/2012

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 implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to prescribe division objectives, standards and conditions for the issuance of materials permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on sovereign 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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule clarifies Division objectives, standards and conditions for the issuance of materials permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on sovereign lands. This rule establishes the administrative process for material permits along with the permit provisions, requirements, and responsibilities. Therefore, this rule should continue.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 04/02/2012

Natural Resources, Wildlife Resources
R657-27
License Agent Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36003
FILED: 04/02/2012

**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: Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

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 supporting or opposing Rule R657-27 were received since 04/04/2007, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-27 provides the application procedures, standards, and requirements for wildlife license agents. The Division of Wildlife Resources (DWR) oversees more than 300 license agents; this rule is required to keep consistency among the agents and to ensure they are following Wildlife guidelines with the issuance of hunting licenses and permits. Continuation of this rule is necessary for continued success of this program.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 04/02/2012

Natural Resources, Wildlife Resources
R657-50
Error Remedy

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36004
FILED: 04/02/2012

**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: Under Sections 23-14-19, 23-19-1, and 23-19-38 this rule is established to provide guidelines for identifying and resolving errors resulting in the: (a) rejection of a wildlife document application; (b) denial of a

wildlife document; (c) incorrect issuance of a wildlife document. This rule provides standards and procedures in the identification and resolution of division errors, third party errors and petitioner errors.

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 supporting or opposing Rule R657-50 were received since 04/04/2007, when the rule was implemented.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-50 provides the Division of Wildlife Resources (DWR) a guideline for identifying and correcting errors that are made throughout the division programs. This rule provides standards and criteria for resolving errors. Continuation of this rule is necessary for continued success of the division.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 04/02/2012

Transportation, Program Development
R926-4
Establishing and Defining a Functional
Classification of Highways in the State
of Utah

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
 DAR FILE NO.: 35959
 FILED: 03/20/2012

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 and enacted under the authority of Subsection 72-4-102.5(7) and establishes the procedure and criteria by which highways are functionally classified.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from interested persons received during and since the last five year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue in order to keep in place the procedure and criteria by which highways are functionally classified.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION
 PROGRAM DEVELOPMENT
 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:
 ♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 03/20/2012

End of the Five-Year Notices of Review and Statements of Continuation Section

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

The five-year review extension is governed by Subsections 63G-3-305(4) and (5).

**Financial Institutions, Administration
R331-22
Rule Governing Reimbursement of
Costs of Financial Institutions for
Production of Records**

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 36021
FILED: 04/02/2012

EXTENSION REASON AND NEW DEADLINE: Due to a clerical error at Administrative Rules, Financial Institutions was not notified in a timely manner of the due date for the five-year review on this rule. Financial Institutions has requested an extension. The new due date is 08/14/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 04/02/2012

**Technology Services, Administration
R895-3
Computer Software Licensing,
Copyright, Control, Retention, and
Transfer**

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35989
FILED: 03/29/2012

EXTENSION REASON AND NEW DEADLINE: The agency is in the process of determining an updated policy to ensure compliance with computer software licensing agreements and applicable federal laws. The new deadline date is 09/26/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

AUTHORIZED BY: J Stephen Fletcher, CIO and Executive Director

EFFECTIVE: 03/29/2012

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Fleet Operations

No. 35727 (NEW): R27-9. Dispensing Compressed Natural Gas to the Public
Published: 02/15/2012
Effective: 03/26/2012

Purchasing and General Services

No. 35664 (AMD): R33-1. Utah State Procurement Rules Definitions
Published: 02/01/2012
Effective: 03/30/2012

No. 35613 (AMD): R33-3. Source Selection and Contract Formation
Published: 01/15/2012
Effective: 03/30/2012

No. 35667 (AMD): R33-3-7. Types of Contracts
Published: 02/01/2012
Effective: 03/30/2012

No. 35665 (AMD): R33-4. Specifications
Published: 02/01/2012
Effective: 03/30/2012

No. 35666 (AMD): R33-6-101. Revisions to Contract Clauses
Published: 02/01/2012
Effective: 03/30/2012

Community and Culture

Home Energy Assistance Target (HEAT)

No. 35403 (AMD): R195-1. Energy Assistance: General Provisions
Published: 12/01/2011
Effective: 03/26/2012

No. 35405 (AMD): R195-3-3. Unearned Income
Published: 12/01/2011
Effective: 03/26/2012

No. 35406 (AMD): R195-5. Energy Assistance: Program Benefits
Published: 12/01/2011
Effective: 03/26/2012

No. 35407 (AMD): R195-6. Energy Assistance: Eligibility Determination
Published: 12/01/2011
Effective: 03/26/2012

No. 35408 (AMD): R195-7. Energy Assistance: Records and Benefit Management
Published: 12/01/2011
Effective: 03/26/2012

No. 35409 (AMD): R195-8. Energy Assistance: Special State Programs
Published: 12/01/2011
Effective: 03/26/2012

Environmental Quality

Water Quality

No. 35359 (CPR): R317-2. Standards of Quality for Waters of the State
Published: 02/15/2012
Effective: 04/01/2012

No. 35359 (AMD): R317-2. Standards of Quality for Waters of the State
Published: 11/01/2011
Effective: 04/01/2012

Health

Children's Health Insurance Program

No. 35788 (AMD): R382-10. Eligibility
Published: 02/15/2012
Effective: 04/01/2012

NOTICES OF RULE EFFECTIVE DATES

Health Care Financing, Coverage and Reimbursement Policy
No. 35789 (AMD): R414-303. Coverage Groups
Published: 02/15/2012
Effective: 04/01/2012

No. 35790 (AMD): R414-308. Application, Eligibility
Determinations and Improper Medical Assistance
Published: 02/15/2012
Effective: 04/01/2012

Family Health and Preparedness, Licensing
No. 35652 (AMD): R432-650. End Stage Renal Disease
Facility Rules
Published: 02/01/2012
Effective: 03/28/2012

Human Services

Recovery Services
No. 35728 (AMD): R527-34. Non IV-A Services
Published: 02/15/2012
Effective: 03/27/2012

No. 35729 (AMD): R527-35. Non IV-A Fee Schedule
Published: 02/15/2012
Effective: 03/27/2012

No. 35619 (AMD): R527-201. Medical Support Services
Published: 02/01/2012
Effective: 03/27/2012

Insurance

Administration
No. 35699 (AMD): R590-230. Suitability in Annuity
Transactions
Published: 02/15/2012
Effective: 03/26/2012

Natural Resources

Wildlife Resources
No. 35734 (AMD): R657-20. Falconry
Published: 02/15/2012
Effective: 04/02/2012

No. 35733 (AMD): R657-33. Taking Bear
Published: 02/15/2012
Effective: 04/02/2012

Pardons (Board Of)

Administration
No. 35551 (AMD): R671-305. Notification of Board Decision
Published: 01/15/2012
Effective: 03/26/2012

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, 2012 through April 02, 2012. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
R27-6	Fuel Dispensing Program	35620	5YR	01/05/2012	2012-3/106
R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
R27-9	Dispensing Compressed Natural Gas to the Public	35727	NEW	03/26/2012	2012-4/6
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	35664	AMD	03/30/2012	2012-3/4
R33-3	Source Selection and Contract Formation	35613	AMD	03/30/2012	2012-2/6
R33-3-7	Types of Contracts	35667	AMD	03/30/2012	2012-3/6
R33-4	Specifications	35665	AMD	03/30/2012	2012-3/10
R33-6-101	Revisions to Contract Clauses	35666	AMD	03/30/2012	2012-3/12
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	2012-4/59
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
R58-18	Elk Farming	35695	5YR	01/18/2012	2012-4/60
R58-19	Compliance Procedures	35696	5YR	01/18/2012	2012-4/60
R58-22	Equine Infectious Anemia (EIA)	35694	5YR	01/18/2012	2012-4/61
R58-23	Equine Viral Arteritis (EVA)	35693	5YR	01/18/2012	2012-4/61
<u>Plant Industry</u>					
R68-19	Compliance Procedures	35697	5YR	01/18/2012	2012-4/62

R68-21	Standard of Identity for Honey	35566	REP	03/07/2012	2012-2/16
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	35660	5YR	01/12/2012	2012-3/108
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	35661	5YR	01/12/2012	2012-3/109
R70-350	Ice Cream and Frozen Dairy Food Standards	35658	5YR	01/12/2012	2012-3/109
R70-360	Procedure for Obtaining a License to Test Milk for Payment	35657	5YR	01/12/2012	2012-3/110
R70-530	Food Protection	35920	5YR	03/07/2012	2012-7/63
R70-550	Utah Inland Shellfish Safety Program	35659	5YR	01/12/2012	2012-3/110
R70-560	Inspection and Regulation of Cottage Food Production Operations	35662	5YR	01/12/2012	2012-3/111
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<u>Administration</u>					
R81-1-6	Violation Schedule	35588	AMD	03/01/2012	2012-2/20
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R131-9	State Capitol Preservation Board Art Program and Policy	35686	R&R	03/09/2012	2012-3/13
R131-10	Commercial Solicitations	35687	5YR	01/17/2012	2012-3/111
R131-11	Preservation of Free Speech Activities	35688	5YR	01/17/2012	2012-3/112
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35611	EMR	01/03/2012	2012-2/105
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35610	AMD	02/21/2012	2012-2/24
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R151-3	Americans With Disabilities Act Rule	35897	5YR	02/28/2012	2012-6/35
<u>Consumer Protection</u>					
R152-6	Utah Administrative Procedures Act Rules	35974	5YR	03/26/2012	Not Printed
R152-15	Business Opportunity Disclosure Act Rules	35965	5YR	03/22/2012	Not Printed
R152-20	New Motor Vehicle Warranties	35967	5YR	03/22/2012	Not Printed
R152-22	Charitable Solicitations Act	35970	5YR	03/22/2012	Not Printed
R152-23	Utah Health Spa Services	35971	5YR	03/22/2012	Not Printed
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R156-16a	Optometry Practice Act Rule	35893	5YR	02/21/2012	2012-6/35
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-37	Utah Controlled Substances Act Rule	35892	5YR	02/21/2012	2012-6/36
R156-47b-102	Definitions	35498	AMD	01/26/2012	2011-24/6
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R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	35735	5YR	01/31/2012	2012-4/62
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	2012-4/64
R156-67-503	Administrative Penalties	35389	AMD	03/09/2012	2011-22/14

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R156-68-503	Administrative Penalties	35388	AMD	03/09/2012	2011-22/19
R156-68-503	Administrative Penalties	35388	CPR	03/09/2012	2012-3/90
R156-76	Professional Geologist Licensing Act Rule	35894	5YR	02/21/2012	2012-6/37
R156-78B	Prelitigation Panel Review Rule	35820	5YR	02/02/2012	2012-5/102
R156-83-502	Unprofessional Conduct	35585	AMD	02/21/2012	2012-2/28

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R195-3-3	Unearned Income	35405	AMD	03/26/2012	2011-23/16
R195-5	Energy Assistance: Program Benefits	35406	AMD	03/26/2012	2011-23/17
R195-6	Energy Assistance: Eligibility Determination	35407	AMD	03/26/2012	2011-23/18
R195-7	Energy Assistance: Records and Benefit Management	35408	AMD	03/26/2012	2011-23/19
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R251-106	Media Relations	35767	EMR	02/01/2012	2012-4/45
R251-107	Executions	35761	EXD	01/18/2012	2012-4/123
R251-107	Executions	35768	EMR	02/01/2012	2012-4/47
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R251-306	Sponsors in Community Correctional Centers	35755	EXT	01/31/2012	2012-4/121
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R251-705	Inmate Mail Procedures	35765	EXD	01/18/2012	2012-4/124
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R251-707	Legal Access	35756	EXT	01/31/2012	2012-4/121
R251-710	Search	35757	EXT	01/31/2012	2012-4/121

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R277-102	Adjudicative Proceedings	35534	R&R	02/07/2012	2012-1/8
R277-102	Adjudicative Proceedings	35856	NSC	02/29/2012	Not Printed
R277-107	Educational Services Outside of Educator's Regular Employment	35674	AMD	03/12/2012	2012-3/19
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	35535	AMD	02/07/2012	2012-1/11
R277-426	Definition of Private and Non-Profit Schools for Federal Program Services	35536	AMD	02/07/2012	2012-1/13
R277-470	Charter Schools	35451	AMD	01/10/2012	2011-23/28
R277-476	Incentives for Elementary Reading Program	35675	REP	03/12/2012	2012-3/22
R277-480-1	Definitions	35582	NSC	01/31/2012	Not Printed
R277-480-1	Definitions	35817	NSC	02/29/2012	Not Printed
R277-481	Charter School Oversight, Monitoring and Appeals	35452	NEW	01/10/2012	2011-23/34

R277-482	Charter School Timelines and Approval Processes	35453	NEW	01/10/2012	2011-23/38
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R277-503	Licensing Routes	35677	AMD	03/12/2012	2012-3/24
R277-503	Licensing Routes	35939	5YR	03/15/2012	2012-7/63
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R277-511	Highly Qualified Teacher Grants	35678	REP	03/12/2012	2012-3/28
R277-512	Online Licensure	35673	5YR	01/17/2012	2012-3/114
R277-513	Dual Certification	35679	REP	03/12/2012	2012-3/30
R277-519	Educator Inservice Procedures and Credit	35941	5YR	03/15/2012	2012-7/64
R277-520	Appropriate Licensing and Assignment of Teachers	35680	AMD	03/12/2012	2012-3/32
R277-608	Prohibition of Corporal Punishment in Utah's Public Schools	35454	AMD	01/10/2012	2011-23/41
R277-703	Centennial Scholarship for Early Graduation	35537	AMD	02/07/2012	2012-1/14
R277-705	Secondary School Completion and Diplomas	35818	5YR	02/02/2012	2012-5/103
R277-714	Dissemination of Information About Juvenile Offenders	35681	AMD	03/12/2012	2012-3/36
R277-718	Utah Career Teaching Scholarship Program	35682	REP	03/12/2012	2012-3/37
R277-730	Alternative High School Curriculum	35538	REP	02/07/2012	2012-1/16
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R277-915	Work-based Learning Programs for Interns	35683	AMD	03/12/2012	2012-3/39

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R307-120	General Requirements: Tax Exemption for Air Pollution Control Equipment	35775	5YR	02/01/2012	2012-4/81
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	35716	5YR	01/23/2012	2012-4/81
R307-121-7	Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels	35718	NSC	02/09/2012	Not Printed
R307-130	General Penalty Policy	35776	5YR	02/01/2012	2012-4/82
R307-135	Enforcement Response Policy for Asbestos Hazard Emergency Response Act	35777	5YR	02/01/2012	2012-4/82
R307-210-1	Standards of Performance for New Stationary Sources (NSPS)	35496	AMD	03/07/2012	2011-24/7
R307-220-3	Section II, Hospital, Medical, Infectious Waste Incinerators	35531	AMD	03/07/2012	2012-1/21
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	35530	AMD	03/07/2012	2012-1/22
R307-301	Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure	35778	5YR	02/01/2012	2012-4/83
R307-320	Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program	35779	5YR	02/01/2012	2012-4/84
R307-325	Ozone Nonattainment and Maintenance Areas: General Requirements	35780	5YR	02/01/2012	2012-4/84
R307-326	Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries	35781	5YR	02/01/2012	2012-4/85
R307-327	Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage	35782	5YR	02/01/2012	2012-4/86
R307-328	Gasoline Transfer and Storage	35783	5YR	02/01/2012	2012-4/86
R307-335	Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations	35784	5YR	02/01/2012	2012-4/87
R307-340	Ozone Nonattainment and Maintenance Areas: Surface Coating Processes	35785	5YR	02/01/2012	2012-4/87
R307-341	Ozone Nonattainment and Maintenance Areas: Cutback Asphalt	35786	5YR	02/01/2012	2012-4/88

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R307-343	Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations	35787	5YR	02/01/2012	2012-4/89
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	35413	AMD	02/02/2012	2011-23/42
R307-405-3	Definitions	35872	NSC	02/29/2012	Not Printed
R307-415-2	Authority	35529	AMD	03/07/2012	2012-1/25
<u>Environmental Response and Remediation</u>					
R311-200	Underground Storage Tanks: Definitions	35668	AMD	03/09/2012	2012-3/42
R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	35447	AMD	01/13/2012	2011-23/45
<u>Radiation Control</u>					
R313-17	Administrative Procedures	35416	AMD	03/19/2012	2011-23/50
R313-22-75	Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material	35417	AMD	01/16/2012	2011-23/51
R313-35	Requirements for X-Ray Equipment Used for Non-Medical Applications	35906	5YR	03/02/2012	2012-7/65
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<u>Solid and Hazardous Waste</u>					
R315-1	Utah Hazardous Waste Definitions and References	35349	AMD	01/13/2012	2011-21/27
R315-2	General Requirements - Identification and Listing of Hazardous Waste	35350	AMD	01/13/2012	2011-21/30
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	35351	AMD	01/13/2012	2011-21/38
R315-5	Hazardous Waste Generator Requirements	35352	AMD	01/13/2012	2011-21/53
R315-6	Hazardous Waste Transporter Requirements	35353	AMD	01/13/2012	2011-21/57
R315-7	Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities	35354	AMD	01/13/2012	2011-21/60
R315-8	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	35355	AMD	01/13/2012	2011-21/67
R315-13	Land Disposal Restrictions	35356	AMD	01/13/2012	2011-21/75
R315-14-8	Military Munitions	35357	AMD	01/13/2012	2011-21/76
R315-50-9	Basis for Listing Hazardous Wastes	35358	AMD	01/13/2012	2011-21/77
R315-304	Industrial Solid Waste Landfill Requirements	35988	5YR	03/29/2012	Not Printed
R315-312-1	Recycling and Composting Facility Standards	35432	AMD	01/13/2012	2011-23/59
R315-315-5	Special Waste Requirements	35433	AMD	01/13/2012	2011-23/60
R315-320-2	Definitions	35434	AMD	01/13/2012	2011-23/61
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R317-2	Standards of Quality for Waters of the State	35359	AMD	04/01/2012	2011-21/78
R317-2	Standards of Quality for Waters of the State	35359	CPR	04/01/2012	2012-4/40
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	35238	AMD	01/25/2012	2011-19/31
R317-12	General Requirements: Tax Exemption for Water Pollution Control Equipment	35726	5YR	01/25/2012	2012-4/89

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R320-101	Procedures for Electronic Meetings	35497	NEW	02/10/2012	2011-24/10
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R331-7	Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions	35684	AMD	03/09/2012	2012-3/46
R331-22	Rule Governing Reimbursement of Costs of Financial Institutions for Production of Records	36021	EXT	04/02/2012	Not Printed

Credit Unions

R337-10	Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions	35700	5YR	01/20/2012	2012-4/90
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R343-1	Rule Governing Form of Disclosures For Title Lenders, Who Are Under the Jurisdiction of the Department of Financial Institutions	35628	5YR	01/06/2012	2012-3/114
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GOVERNOR

Economic Development, Pete Suazo Utah Athletic Commission

R359-1	Pete Suazo Utah Athletic Commission Act Rule	36002	5YR	03/30/2012	Not Printed
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R380-60	Local Health Department Emergency Protocols	35571	NEW	03/07/2012	2012-2/31
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R428-15	Health Data Authority Health Insurance Claims Reporting	35616	AMD	03/16/2012	2012-3/51
R428-20	Health Data Authority Request for Health Data Information	35492	REP	01/24/2012	2011-24/20

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R382-10	Eligibility	35788	AMD	04/01/2012	2012-4/7
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R392-100	Food Service Sanitation	35715	5YR	01/20/2012	2012-4/91
R392-100	Food Service Sanitation	35445	AMD	01/26/2012	2011-23/62
R392-200	Design, Construction, Operation, Sanitation, and Safety of Schools	35710	5YR	01/20/2012	2012-4/91
R392-300	Recreation Camp Sanitation	35709	5YR	01/20/2012	2012-4/92
R392-301	Recreational Vehicle Park Sanitation	35708	5YR	01/20/2012	2012-4/93
R392-302	Design, Construction and Operation of Public Pools	35707	5YR	01/20/2012	2012-4/93
R392-400	Temporary Mass Gatherings Sanitation	35711	5YR	01/20/2012	2012-4/94
R392-401	Roadway Rest Stop Sanitation	35714	5YR	01/20/2012	2012-4/94
R392-402	Mobile Home Park Sanitation	35712	5YR	01/20/2012	2012-4/95
R392-501	Labor Camp Sanitation	35713	5YR	01/20/2012	2012-4/96
R392-502	Hotel, Motel and Resort Sanitation	36017	5YR	04/02/2012	Not Printed
R392-510	Utah Indoor Clean Air Act	36019	5YR	04/02/2012	Not Printed

Disease Control and Prevention, Laboratory Improvement

R444-11	Rules for Approval to Perform Blood Alcohol Examinations	35701	5YR	01/20/2012	2012-4/99
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Disease Control and Prevention, Laboratory Services

R438-12	Rule for Law Enforcement Blood Draws	35706	5YR	01/20/2012	2012-4/98
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Family Health and Preparedness, Licensing

R432-4	General Construction	35459	AMD	02/21/2012	2011-24/21
R432-4-8	Standards Compliance	35649	NSC	02/21/2012	Not Printed
R432-5	Nursing Facility Construction	35460	AMD	02/21/2012	2011-24/28
R432-6	Assisted Living Facility General Construction	35461	AMD	02/21/2012	2011-24/33

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R432-7	Specialty Hospital -- Psychiatric Hospital Construction	35462	AMD	02/21/2012	2011-24/38
R432-8	Specialty Hospital - Chemical Dependency/Substance Abuse Construction	35463	AMD	02/21/2012	2011-24/40
R432-9	Specialty Hospital - Rehabilitation Construction Rule	35464	AMD	02/21/2012	2011-24/43
R432-10	Specialty Hospital -- Long-Term Acute Care Construction Rule	35465	AMD	02/21/2012	2011-24/46
R432-11	Orthopedic Hospital Construction	35466	AMD	02/21/2012	2011-24/50
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	35467	AMD	02/21/2012	2011-24/53
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	35468	AMD	02/21/2012	2011-24/57
R432-14	Birthing Center Construction Rule	35469	AMD	02/21/2012	2011-24/59
R432-16	Hospice Inpatient Facility Construction	35470	AMD	02/21/2012	2011-24/61
R432-31	Life with Dignity Order	35976	5YR	03/28/2012	Not Printed
R432-40	Long-Term Care Facility Immunizations	35977	5YR	03/28/2012	Not Printed
R432-100	General Hospital Standards	35500	AMD	02/08/2012	2011-24/67
R432-100	General Hospital Standards	35471	AMD	02/21/2012	2011-24/65
R432-150	Nursing Care Facility	35978	5YR	03/28/2012	Not Printed
R432-151	Mental Disease Facility	35979	5YR	03/28/2012	Not Printed
R432-152	Mental Retardation Facility	35980	5YR	03/28/2012	Not Printed
R432-200	Small Health Care Facility (Four to Sixteen Beds)	35981	5YR	03/28/2012	Not Printed
R432-201	Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule	35982	5YR	03/28/2012	Not Printed
R432-270-6	Administrator Qualifications	35499	AMD	02/08/2012	2011-24/73
R432-300	Small Health Care Facility - Type N	35983	5YR	03/28/2012	Not Printed
R432-650	End Stage Renal Disease Facility Rules	35472	AMD	02/21/2012	2011-24/74
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R986-700-713	Amount of CC Payment	35586	AMD	04/01/2012	2012-2/104
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R994-403-112c	Available	35448	AMD	01/17/2012	2011-23/98
R994-508	Appeal Procedures	35455	AMD	02/01/2012	2011-23/101

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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<u>accessing records</u>					
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	35638	R708-35	5YR	01/09/2012	2012-3/124
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	35769	R251-108	EMR	02/01/2012	2012-4/49
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	35534	R277-102	R&R	02/07/2012	2012-1/8
	35856	R277-102	NSC	02/29/2012	Not Printed
Environmental Quality, Radiation Control	35416	R313-17	AMD	03/19/2012	2011-23/50
Human Resource Management, Administration	35823	R477-3	5YR	02/02/2012	2012-5/108
	35832	R477-12	5YR	02/03/2012	2012-5/114
	35835	R477-15	5YR	02/03/2012	2012-5/115
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	36006	R652-3	5YR	04/02/2012	Not Printed
	36007	R652-4	5YR	04/02/2012	Not Printed
	36008	R652-5	5YR	04/02/2012	Not Printed
	36009	R652-20	5YR	04/02/2012	Not Printed
	36010	R652-30	5YR	04/02/2012	Not Printed
	36011	R652-40	5YR	04/02/2012	Not Printed
	36012	R652-50	5YR	04/02/2012	Not Printed
	36014	R652-70	5YR	04/02/2012	Not Printed
	36016	R652-100	5YR	04/02/2012	Not Printed
Public Safety, Driver License	35632	R708-7	5YR	01/09/2012	2012-3/122
	35633	R708-8	5YR	01/09/2012	2012-3/123
School and Institutional Trust Lands, Administration	35542	R850-41	NEW	02/07/2012	2012-1/44
	35655	R850-90	5YR	01/12/2012	2012-3/126
	35656	R850-120	5YR	01/12/2012	2012-3/127
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Environmental Quality, Environmental Response and Remediation	35447	R311-201	AMD	01/13/2012	2011-23/45
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	35775	R307-120	5YR	02/01/2012	2012-4/81
	35716	R307-121	5YR	01/23/2012	2012-4/81
	35718	R307-121-7	NSC	02/09/2012	Not Printed
	35776	R307-130	5YR	02/01/2012	2012-4/82
	35777	R307-135	5YR	02/01/2012	2012-4/82
	35496	R307-210-1	AMD	03/07/2012	2011-24/7
	35531	R307-220-3	AMD	03/07/2012	2012-1/21
	35530	R307-222	AMD	03/07/2012	2012-1/22
	35779	R307-320	5YR	02/01/2012	2012-4/84
	35780	R307-325	5YR	02/01/2012	2012-4/84
	35781	R307-326	5YR	02/01/2012	2012-4/85
	35782	R307-327	5YR	02/01/2012	2012-4/86
	35783	R307-328	5YR	02/01/2012	2012-4/86
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	35785	R307-340	5YR	02/01/2012	2012-4/87
	35786	R307-341	5YR	02/01/2012	2012-4/88
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	35413	R307-405	AMD	02/02/2012	2011-23/42
	35872	R307-405-3	NSC	02/29/2012	Not Printed
	35529	R307-415-2	AMD	03/07/2012	2012-1/25
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	35718	R307-121-7	NSC	02/09/2012	Not Printed
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	35939	R277-503	5YR	03/15/2012	2012-7/63
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Tax Commission, Auditing	35606	R865-19S	5YR	01/03/2012	2012-2/133
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	35582	R277-480-1	NSC	01/31/2012	Not Printed
	35817	R277-480-1	NSC	02/29/2012	Not Printed
	35452	R277-481	NEW	01/10/2012	2011-23/34
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	35619	R527-201	AMD	03/27/2012	2012-3/70
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	35911	R512-31	5YR	03/05/2012	2012-7/68
	35912	R512-32	5YR	03/05/2012	2012-7/69
	35630	R512-80	NEW	03/15/2012	2012-3/64
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	35813	R406-200	5YR	02/02/2012	2012-5/105
	35814	R406-201	5YR	02/02/2012	2012-5/105
	35815	R406-202	5YR	02/02/2012	2012-5/106
	35816	R406-301	5YR	02/02/2012	2012-5/106
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	35804	R645-201	5YR	02/01/2012	2012-4/107
	35836	R645-202	5YR	02/03/2012	2012-5/117
	35837	R645-203	5YR	02/03/2012	2012-5/117
	35838	R645-300	5YR	02/03/2012	2012-5/118
	35839	R645-301	5YR	02/03/2012	2012-5/118
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	35762	R251-108	EXD	01/18/2012	2012-4/123
	35769	R251-108	EMR	02/01/2012	2012-4/49
	35754	R251-305	EXT	01/31/2012	2012-4/121
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	35763	R251-703	EXD	01/18/2012	2012-4/124
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	35772	R251-705	EMR	02/01/2012	2012-4/53
	35766	R251-706	EXD	01/18/2012	2012-4/124
	35773	R251-706	EMR	02/01/2012	2012-4/56
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	35743	R671-303	5YR	01/31/2012	2012-4/113
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