

# Researching Utah Administrative Law

by Jessica Van Buren and Mari Cheney

Your client may have violated a Department of Environmental Quality rule. As you investigate the situation, you discover that the department may have fined your client wrongly thirty years ago, but you are having a difficult time locating the agency's administrative rule as it existed then.

Researching administrative rules is not as complicated as it may first seem. Although it is true that it is easier to find information about a rule after 1987, do not give up hope if you need information about an older rule.

## A Brief History

In 1973, the state archivist had responsibility for compiling and publishing the administrative rules. In 1985, the legislature created the Office of Administrative Rules as an office within the Division of State Archives. In 1987, the Legislature recreated the office as the Division of Administrative Rules, removing the agency from the umbrella of State Archives. The Division of Administrative Rules was elevated to division status within the Department of Administrative Services.

Today the Division of Administrative Rules is responsible for establishing rulemaking procedures, recording and publishing administrative rules, and enforcing the requirements of the Utah Administrative Rulemaking Act.

## The Utah Administrative Rulemaking Act

The Administrative Rulemaking Act spells out when rulemaking is required by agencies, generally outlines rulemaking procedures, and provides for public hearings. See UTAH CODE ANN. §§ 63G-3-101 to 702 (2008). The Division of Administrative Rules promulgated rules to implement provisions of the act that appear under Title R15 of the Utah Administrative Code.

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## Rulemaking Process

The agency rulemaking process can be divided into six distinct areas:

- An agency is **authorized** to regulate by the Utah Constitution, Utah law, Federal law, or court order.
- In the **pre-proposal phase**, an agency identifies the need for a new rule or change to an existing rule that includes text for the proposed rule, a rule analysis and anticipated cost or savings.
- An agency **files the proposed rule** with the Division of Administrative Rules, and it is then submitted to the executive branch for review. The proposed rule is published in the Utah State Bulletin and a summary of the rule is provided in the Utah State Digest.
- During the **comment period**, interested persons and groups may submit comments to the agency, and the agency then considers the comments. In some circumstances, a hearing must be held.
- An agency provides notice to the Division of Administrative Rules of the rule's effective date – this is called the **adoption phase**. Then, the Division of Administrative Rules **publishes** the rule in the Utah Administrative Code (UAC).
- After the rule is effective, the agency **enforces** the new or modified rule.

## How to Research Utah Administrative Rules

### Pre-1973 Rules

Before 1973 there was no statutory process for enacting and amending administrative rules that applied generally to all state agencies, so researching rules from that time period can be

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challenging. The only source of information for those rules will be the files of the agency, kept by the Utah State Archives. Each agency keeps different records, so you may find nothing, partial, or complete rulemaking information.

Agency names can change over time, which can make it harder to track rules. The Utah State Archives maintains histories for some state agencies that may include information about the previous names an agency used.

### 1973–1985 Rules

With the passage of the Administrative Rule Making Act in 1973, a process was established for collecting and compiling administrative rules through a central state agency – today’s Division of Administrative Rules.

All of the resources listed below are available at the Division of Administrative Rules and the Utah State Archives (the Archives). Unless otherwise indicated, the Division of Administrative Rules has the hard (or paper) copies of the resources and the Archives has microfiche copies.

Researchers should contact the Division of Administrative Rules to make an appointment to use their resources. The Archives has a public research room available. Information about hours of operation can be found on their website located at <http://archives.utah.gov/index.html>.

Follow the steps below when researching 1973–1985 rules:

- **Check the index card files, also called the card catalog.** The cards are organized by type of rule – either proposed or adopted – and within those categories they are organized by agency, and then by date.
- **Check the Rules Register.** The Rules Register, also called the Rules Filings Register, is a chronological list of rule changes. Checking this list requires scanning every page for the time period you are interested in to see if there are any listings for the agency you are researching.
- **Check the Utah State Bulletin.** The table of contents to the Utah State Bulletin lists rules by type and agency.
- **Use the file number(s) found in the above resources to find the rule filings on microfilm.**
- **Check the agency files for additional information, such as hearing minutes.** Some agencies are more likely to have information about their rulemaking process than oth-

ers. For example, the Public Service Commission and the Tax Commission are more likely than the Department of Health to have additional information.

### 1987–Current Rules

In 1987 the UAC was completely reorganized, renumbered, and recodified. Researching rules after this recodification is much simpler than in previous years.

To trace the history of an administrative rule, consult the **annotated** administrative code and locate the history information provided after the text of the rule. The history information helps you determine when language was added to or deleted from the rule. The history information will also help you find the rule as it appeared before the version you are consulting. For example, the history information for rule 501-13-18 of the UAC is as follows:

#### Code Version History Information for R501-13-18

UAC (Online)	Date of Enactment of Last Substantive Amendment April 15, 2000 Notice of Continuation November 5, 2007
UAC Annotated	History: 13692, NEW, 12/15/92; 14195, NSC 03/01/93; 20213, 5YR, 11/07/97; 22661, R&R, 04/15/2000; 25625, 5YR, 11/07/2002; 30678, 5YR, 11/05/2007.

The online (unannotated) version of the UAC provides only partial history information whereas the history notes from the annotated UAC contain abbreviations, which convey the following information:

- The rule was originally enacted in 1992. The number preceding the abbreviation is the file number;
- There was a nonsubstantive change to the rule in 1993;
- There was a notice of continuation after a 5-year review in 1997;
- The rule was repealed and re-enacted in 2000;
- There was a notice of continuation after a 5-year review in 2002; and
- There was a notice of continuation after a 5-year review in 2007.

In most cases the history line from the annotated UAC provides a complete history of the rule from its enactment (if 1987 or later) to its current version. However, rules can be renumbered, or repealed and re-enacted, and these actions are not always reflected in the history notes. If you think the rule existed before

the stated enactment date, consult superseded volumes.

### Abbreviations used in *Utah Administrative Code*

#### Annotated history notes

AMD	Amendment
CPR	Change in Proposed Rule
EMR	Emergency or 120-Day Rule
EXD	Expired Rule
EXP	Expedited Rule
EXT	120-Day Extension for Five-Year Review Filing
NEW	New Rule
NSC	Nonsubstantive Change
PRO	Proposed Rule (new or amended)
REP	Repeal
R&E or	Repeal and Enact
R&R	Repeal and Reenact
5YR	Notice of Continuation After Five-Year Review

A complete description of these abbreviations is provided before the Index of Changes, which is published in volume 10 of the UAC.

### Utah Administrative Code

The UAC contains the regulations of all Utah agencies, arranged by department, board or commission, and then by title number. The UAC was completely recodified in 1987, and partially recodified in 1992. The UAC was not published in 1998 or 1999.

Effective 2003, the official version of the UAC, Utah State Bulletin, and Utah State Digest are published on the Division of Administrative Rules website.

Places to find the UAC:

- Utah's Law Libraries
  - Unannotated UAC, 1987–1997
  - Annotated UAC, 2000–present
- The Division of Administrative Rules
  - Unannotated UAC, 1987–1997
  - Annotated UAC, 2000–present

Snell & Wilmer is pleased to announce that Dennis Haslam has joined the firm's business and finance group.



Dennis brings significant business management experience to the firm, having held positions in the investment, real estate, sports and entertainment, automotive, and insurance industries, including president of the Utah Jazz and a sports and entertainment company. In addition, Dennis founded and managed the law firm of Winder & Haslam, P.C., where he focused on litigation, mergers and acquisitions, commercial transactions, sports law, and business matters.

At Snell & Wilmer, Dennis will use both his legal and business experience to represent businesses and individuals on a wide variety of issues including commercial transactions, mergers and acquisitions, finance, sports, and general corporate matters. Dennis can be reached at 801.257.1923 or [dhaslam@swlaw.com](mailto:dhaslam@swlaw.com).

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- Utah State Archives  
Series 83623, 1973–present

According to the State Archives website, holdings prior to 1987 are “somewhat sporadic,” and coverage is not complete. There are codes for 1974, 1976, 1977, 1980, 1981, and 1982.

- Division of Administrative Rules’ Website  
1995–present

- LexisNexis  
2004–present

- Westlaw  
Current code (database: UT-ADC)

Historic (2002–) (database: UT-ADCXX, where XX is the 2-digit year designator).

### Utah State Bulletin

The Utah State Bulletin (the Bulletin) includes proposed rules, rule analyses, notices of effective dates, and review notices. It also includes public notices, and Governor’s executive documents. It is Utah’s equivalent to the Federal Register. The Bulletin became an exclusively online publication in 2003.

The print of the Bulletin has gone by various titles:

Utah Administrative Rule Making Bulletin (1973–1977);

State of Utah Bulletin (1978–1985);

Utah State Bulletin (CodeCo, June 1985–June 1986); and

Utah State Bulletin (Division of Administrative Rules, 1985–2003).

Online:

- The Division of Administrative Rules’ website  
<http://www.rules.utah.gov>  
1996–present <http://www.rules.utah.gov/publicat/bulletin.htm>
- LexisNexis  
1998–present

### Utah State Digest

The Utah State Digest (the Digest) is a summary of the information found in the Bulletin. The primary difference between the Bulletin and the Digest is that the Digest does not contain the text of administrative rules or other documents. The Digest became an

exclusively online publication in 2001.

Utah State Digest, 1985–2001 (print)

Utah State Digest, 1994–present (online), <http://www.rules.utah.gov/publicat/digest.htm>

### OTHER DIVISION OF ADMINISTRATIVE RULES PUBLICATIONS

- Rulewriting Manual for Utah (1984–present; irregularly published)  
The Rulewriting Manual for Utah was originally a one-stop reference for administrators and rule writers. It contained an explanation of administrative law and administrative rulemaking, provided a brief history of rulemaking in Utah, and discussed the role of the legislature in reviewing agency rulemaking.

Beginning in 2006, the Division of Administrative Rules began transitioning the Rulewriting Manual for Utah into three separate manuals:

- Rulewriting Manual for Utah: Administrators, containing much of the information regarding rulemaking history and law in Utah, as well as the role of the Legislature. Not yet published.
- Rulewriting Manual for Utah: Rulewriters, containing the style section and a brief discussion on certain practical aspects of the rulemaking process. Current edition available at <http://www.rules.utah.gov/agencyresources/manual.htm>.
- Rulewriting Manual for Utah: Rulewriting and eRules, a users’ manual for the eRules software used for submitting rulemaking actions for publication. Not yet published.
- Utah Administrative Rules Table of Changes, 1992–1993 (print)  
Superseded by Utah Administrative Rules Index of Changes.
- Utah Administrative Rules Index of Changes, 1994–1997 (print), 1998–present (online), <http://www.rules.utah.gov/publicat/rulesindex.htm>.
- William S. Callaghan, Utah Rulemaking: A Progress Report, 1985 (print).
- Administrative Rules Affect You! 1996 (print).

### Division of Administrative Rules Records

Administrative rules index card files, 1973–1987

The index card file tracks the actions taken on each rule. The cards include code number, rule title, date filed, hearing date, and other information relating to the promulgation of rules. Held by the Division of Administrative Rules; microfiche copy

available at the Utah State Archives, Series 84550.

Administrative rules files, 1973–current. These files are the official copies of the administrative rules/proposals. Held by the Utah State Archives, Series 7192.

Nonsubstantive rule change files, 1987–1989. These files are the official copies of proposed changes to administrative rules/proposals. The files included in this series are only those proposals that do not alter the meaning of the existing rule but may serve to correct typographic errors or make slight language changes. Held by the Utah State Archives, Series 23021. This series was merged with “Administrative rule files” (Series 7192) in 1990.

Rules filings register, 1973–present. The rules filings register is a chronological list of rules submitted by state agencies as required by statute. The Utah Administrative Rulemaking Act requires the Division of Administrative Rules to “make the register, copies of all proposed rules, and rulemaking documents available for public inspection.” Utah Code Ann. § 63G-3-402(1)(c) (2008).

- Paper copy (1973–present) held by the Division of Administrative Rules

- Microfiche copy (1973–1990) held by the Utah State Archives, Series 84327

- Online (2002–present) available on the Division of Administrative Rules’ website at <http://www.rules.utah.gov>, select Research, Administrative Rules Register.

- The Rules Register from 1985–2001 are available in an electronic format (WordPerfect 5.1) at the Division of Administrative Rules but are not available online.

#### Research Guides

Division of Administrative Rules

<http://rules.utah.gov/research.htm>

Utah State Archives

<http://archives.utah.gov/research/guides/admin-rules.htm>

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## The Utah State Bar is calling for nominations for the 2009 Pro Bono Publico Awards

The deadline for nominations is April 1, 2009.  
The awards will be presented at the  
Law Day Celebration at the Little America Hotel.

By bestowing these prestigious awards, the pro bono community seeks to recognize outstanding pro bono service and to convey a message to the legal profession and the general public about the importance of such service in helping to provide all of Utah with equal access to the justice system, regardless of income.

To download a nomination form and for additional information, please go to [www.utahbar.org](http://www.utahbar.org).