

UTAH STATE BULLETIN

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

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. 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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EDITOR'S NOTES

Delayed Notice, Publication, and Codification of the Expiration of Rule R436-11

Rule R436-11, entitled "Local Registrars," expired effective 12/04/2012. The rule expired because the required five-year review was not filed by the due date (see Subsection 63G-3-305(8)).

The Division of Administrative Rules should have published a Notice of the Expiration in the January 1, 2013, issue of the Utah State Bulletin. Due to a clerical oversight, the Division did not record the expiration until 03/22/2013. Thus, notice is published in this issue.

In addition, the Division should not have included Rule R436-11 in the January 2013, February 2013, and the March 2013 updates to the Utah Administrative Code. These updates will be corrected and annotated with a note explaining the correction.

Questions regarding the expiration of Rule R436-11 should be addressed to Nancy Lancaster at 801-538-3218 or by email at nllancaster@utah.gov. The Division of Administrative Rules regrets any inconvenience caused by this error.

End of the Editor's Notes Section

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for May 2013 Medicaid Rate Changes

Effective May 1, 2013, 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>

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, 2013, 12:00 a.m., and April 01, 2013, 11:59 p.m. are included in this, the April 15, 2013 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, 2013. 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, 2013, 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

Health, Disease Control and
Prevention, Health Promotion
R384-201
School-Based Vision Screening for
Students in Public Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37453

FILED: 03/28/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of school-based vision screening is to set standards and procedures for vision screening for students in public schools. This is necessary to detect vision difficulties in school age children in public schools so that follow-up for potential concerns may be done by the child's parent or guardian. Vision screening is not a substitute for a complete eye exam and vision evaluation by an ophthalmologist or optometrist. The amendment makes minor technical changes to current rule language.

SUMMARY OF THE RULE OR CHANGE: This rule establishes guidelines for student vision screening, including screening requirements, documenting proof of screening, training of screeners, screening documentation, and requirements for referrals. The amendment makes minor technical changes to current rule language.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-11-203

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** All anticipated costs come out of existing budgets. The Utah Division of the Blind is financially responsible for developing and maintaining a vision screening database, maintaining staff positions for vision screening training, screening documentation, photo screening, and referral follow-up. Staff time is required to process school vision screening reports and to create and maintain a registry of results. The State Department of Health will act as consultant in the development of the database, documentation, training, and visual screening requirements in the school setting.

◆ **LOCAL GOVERNMENTS:** The proposed rule does not add costs to existing local budgets. Existing budgets cover the costs of vision screening in school which have long been established, requiring staff time of school personnel and existing school nurses to participate in training, conduct required screenings, and prepare and submit required reports.

◆ **SMALL BUSINESSES:** There are no costs for small businesses. The proposed rule only impacts local schools and state government entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs for small businesses. The proposed rule only impacts local schools and state government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Vision screenings are provided free of charge to students.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes should have no adverse impact on business.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
HEALTH PROMOTION
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:

◆ Heather Borski by phone at 801-538-9998, by FAX at 801-538-9495, or by Internet E-mail at hborski@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R384. Health, Disease Control and Prevention, Health Promotion.

R384-201. School-Based Vision Screening for Students in Public Schools.

R384-201-1. Authority.

(1) This rule is authorized by section 53A-11-203.

(2) The Department of Health is authorized under the rule to set standards and procedures for vision screening required by this chapter, which shall include a process for notifying the parent or guardian of a child who fails a vision screening or is identified as needing follow-up care; and provide the Division with copies of rules, standards, instructions; and recommendation for test charts necessary for conducting vision screening.

R384-201-2. Definitions.

(1) Division -- Division of Services for the Blind and Visually Impaired, State Office of Education.

(2) Eye care professional -- Ophthalmologist or optometrist

(3) LEA -- Local education agency

(4) Photoscreening -- Automated screening technique that facilitates vision screening in children, especially those that are

difficult to screen (infants, toddlers, and children with developmental delays). It screens for a range of eye problems including most refractive errors, alignment errors, opacities (such as cataracts), and other visible eye abnormalities.

(5) Screening certificate -- Written documentation of vision screening or comprehensive eye examination by a licensed physician, ~~[Ophthalmologist or Optometrist]~~ or eye care professional that have been given within one year of entering a public school are acceptable.

(6) Sure Sight -- A vision screening auto-refractor that identifies nearsightedness, farsightedness, astigmatism and the difference between eyes.

(7) Significant visual impairment -- A visual impairment ~~[serve]~~severe enough to interfere with learning. The term is the designation required for a child to receive services from district vision or Utah ~~[School]~~Schools for the Deaf and Blind (USDB).

(8) Screener -- Pediatricians, family practitioners, ~~[and]~~ nurses, or trained medical staff can perform vision screening at regular well child office visits. In addition, school volunteers and groups are trained to support vision screening programs for children. A licensed health professional providing vision care to private patients may participate as a screener in a school vision screening program for a child nine years of age or older.

(9) USDB -- Utah ~~[School]~~Schools for the Deaf and Blind

(10) UDOH -- Utah Department of Health

(11) Vision Screening~~[— Vision screening using an approved eye chart to measure visual acuity in each eye separately. It is an efficient and cost-effective method to identify children with visual impairment so that a referral can be made to an appropriate eye care professional for further evaluation and treatment.]~~School Vision Screening programs are an efficient and cost-effective method to identify children with significant visual impairment so that a referral can be made to an appropriate eye care professional for further evaluation and treatment. School Vision Screenings must use devices and procedures approved by the Division and UDOH. The procedures for conducting screening may include, age or grade levels to be screened, tests to be used, criteria for referral and documentation of findings.

R384-201-3. Purpose.

The purpose of school based vision screening is to set standards and procedures for vision screening for students in public schools. This is necessary to detect vision difficulties in school age children in public schools so that follow-up for potential concerns may be done by the child's parent or guardian. Vision screening is not a substitute for a complete eye exam and vision evaluation by an ~~[ophthalmologist or optometrist]~~eye care professional.

R384-201-4. Students Eligible for Free Screening.

The following students in an LEA may receive free vision ~~[screening for distant visual acuity]~~screenings to include: distance visual acuity and other age appropriate tests that may detect visual problems upon request.

(1) ~~[Students entering kindergarten and any student under age eight entering school for the first time in the Utah;]~~Students entering pre-kindergarten, kindergarten and any student age eight and under entering school for the first time in Utah;

(2) ~~[Vision screening may be conducted for all school age children in grades 1, 2, 3, 5, 7, 9 or 10]~~Vision screening may be conducted for all school age children in grades pre-kindergarten through 12. The UDOH and the Division recommend screening students every other year after pre-kindergarten and kindergarten screenings, to include grades 1, 3, 5, 7, and 9 or 10 and annually for students with hearing impairment and any student referred by school personnel, parent or self to rule out vision as a reason for learning problems;

(3) Tenth grade students may be screened as part of their driver's education class; and

(4) Students who are currently receiving services from the Utah Schools for the Deaf and Blind (USDB) or LEA vision staff who have a diagnosed significant visual impairment will be exempt from screening.

R384-201-5. Required Screening.

Required screening for students identified with disabilities in an LEA are as follows:

(1) Vision issues have to be ruled out as reasons for learning problems before Specific Learning Disability can be used as eligibility criteria and

(2) Every three years, a student must be reevaluated for eligibility for special education in all areas of suspected disability, including vision.

R384-201-6. Proof of Screening.

Certificate or health form from a licensed physician, nurse practioner, ~~[Ophthalmologist or Optometrist]~~eye care professional documenting a visual screening or examination given within one year of entering a public school are acceptable for school entry. All children ~~[under age 8]~~age eight and under entering a public school for the first time without proof of screening mentioned above, ~~[must]~~may be screened during that school year by a trained vision screener.

R384-201-7. Training of Screeners.

(1) A training session shall be provided by the LEA to all volunteer vision screeners prior to the start of annual vision screenings.

(2) Trainings in compliance with Division materials should be provided by the LEA.

(3) The Department of Health in collaboration with the Division shall provide train the trainer vision screening training materials.

(4) Training vision screening materials will be shared with groups that provide free vision screening services in Utah schools.

R384-201-8. Screening.

(1) Screenings are to be performed following criteria developed by the UDOH in collaboration with the Division.

(2) It is recommended that vision screenings are done early in the school session to provide time in that school year for adequate referral and follow-up to be done.

(3) Parents/legal guardian of a child have the right not to participate in vision screening due to personal beliefs. All parents must be notified of scheduled vision screenings by the public school

to provide an opportunity to opt out of screening for their child utilizing the vision screening exemption form, available at the public school, to document a personally held belief.

(4) A public school staff member should be present at all times during vision screenings performed by any volunteer(s) including those done by an ~~[ophthalmologist or optometrist]~~ eye care professional. If the school nurse is not present, the school nurse should be available for consultation and re-screening.

(5) Screenings are to be done using material and procedures approved by the UDOH in collaboration with the Division. Standards and procedures are based on guidance of American Academy of Pediatrics and the American Academy of Ophthalmology and National School Nurse Association.

(6) An ~~[ophthalmologist or optometrist]~~ eye care professional providing vision care to private patients may participate as a screener in a free vision screening program for students nine years of age or older.

(a) An ~~[ophthalmologist or optometrist]~~ eye care professional screener may not market, advertise or promote their business in conjunction with the free screening at public school.

(b) The ~~[ophthalmologist or optometrist]~~ eye care professional will provide results of vision screening to public school ~~[on forms]~~ in a format (paper or electronic) as required by the Division.

(7) Any group that provides free vision screening services in the LEA will provide results of vision screening to the public school on forms required by the Division.

R384-201-9. Documentation and Follow-up.

All vision screening findings are to be documented in the student's ~~[school record. Screening follow-up is to be reported to the Division by the LEA. Reported information may include but not exceed:]~~ permanent school record. Screening failures and follow-up results for students age eight and under, who are entering school for the first time in this state, are to also be reported to the Division by the LEA

~~[Reported information may include but not exceed:]~~ Reported information to the Division shall include:

(1) ~~[Results for Pre-K and Kindergarten students who fail vision screening and referral to an ophthalmologist or optometrist for failed vision screening;]~~ The LEA shall report to the division students who fail vision screening and referral follow-up results for children age eight and under, who are entering school for the first time in this state.

(2) Follow up information from an eye examination referral if available may be included with written permission obtained by the public school from the parent or guardian permission;

(3) Follow-up results and screening findings are to be documented ~~[on a vision acuity screening referral form]~~ in a format approved by the UDOH in collaboration with the Division;

(4) Screening results and follow-up information shall be sent to the Division on or before June 15 for all screenings performed during that school year;

(5) The Division is responsible to maintain a state database/registry only accessible by authorized Division staff of students who fail vision screening and who are referred for follow-up.

(6) In the interest of family privacy, the Division shall not contact a parent or guardian for information related to follow-up referral for professional eye examination unless assistance is requested in writing by the LEA.

R384-201-10. Requirements for Referral.

(1) Children who fail initial age appropriate school vision screening may be re-screened by a school nurse to confirm results before notification to student's parent or guardian of any impairment disclosed by the vision screening recommending further evaluation by an eye care professional. If the screening of a child 9 or older was administered in the public school by an ~~[ophthalmologist or optometrist]~~ eye care professional, the school nurse does not have to rescreen.

(2) The public school shall notify, in writing within 30 days from vision screening, a student's parent or guardian of any impairment disclosed by the vision screening recommending further evaluation by an ~~[ophthalmologist or optometrist]~~ eye care professional.

(3) An LEA may provide information to a parent or guardian of availability of follow up vision services for students.

(4) A student diagnosed by an ~~[ophthalmologist or optometrist]~~ eye care professional with a significant visual impairment shall be referred to the LEA vision consultant or teacher of the visually impaired prior to referral to the USDB.

R384-201-11. Photoscreening.

Preschool, kindergarten children, and special education students who are not candidates for regular vision screening may be screened by a school nurse using a sure sight scanner ~~another device approved by the Division~~ or by Division staff with a photo screening type device. The Division is available for assistance and consultation for photo screening. Prior to photo screening by the Division or other outside agencies approved by the Division, the public school ~~[is required to]~~ shall obtain written permission from the parent or guardian.

References:

National Association of School Nurses (2006) Vision Screening, schools.

S. Proctor (2005) To See or not to See screening the Vision of Children in School. National Association of School Nurses.

Pediatrics Vol. 111 No.4 April 2003, pp. 902-907 at 2003 American Academy of Pediatrics ICPC-2 Category F.Eye.

KEY: eye exams, school vision, vision evaluations

Date of Enactment or Last Substantive Amendment: [February 20,]2013

Authorizing, and Implemented or Interpreted Law: 53A-11-203

Health, Disease Control and Prevention, Environmental Services **R392-510-6** Requirements for Smoking Permitted Areas

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37454

FILED: 03/28/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is made in response to proposed legislation to address the public concern of third-hand smoke in vehicles in which non-smokers are required by employers to use to fulfill work responsibilities. Legal counsel has indicated that the existing statute does not exempt smoking in work vehicles. The Department will remove a sentence in this rule regarding smoking in work vehicles to be congruent with statute.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment to the rule deletes one sentence: "Smoking may be permitted in vehicles that are workplaces when not occupied by nonsmokers."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no anticipated cost or savings to the state budget as issues regarding this rule will be handled using existing funds.

◆ **LOCAL GOVERNMENTS:** No anticipated cost or savings to local governments as rule enforcement will be handled using existing funds.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings other than some minor management costs incurred educating employees regarding smoking no longer being allowed in work vehicles. These types of costs are minor and most likely will be absorbed in the day to day cost of doing business. The Department is unable to estimate these costs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings other than some minor management costs incurred educating employees regarding smoking no longer being allowed in work vehicles. These types of costs are minor and most likely will be absorbed in the day to day cost of doing business. The Department is unable to estimate these costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings to single individuals, partnerships, corporation, associations, governmental entities, or public or private organizations other than minor management costs incurred to train employees regarding the requirements of this rule change. These will most likely be absorbed in the day to day costs of business operation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have no adverse impact on business as it reduces certain regulatory requirements.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.**R392-510. Utah Indoor Clean Air Act.****R392-510-6. Requirements for Smoking Permitted Areas.**

(1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.

(2) If a lodging facility permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed guest rooms, or if a nursing home, assisted living facility, small health care facility, or hospital with a certified swing-bed program permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed private residential sleeping rooms, the facility's air handling system or systems must not allow air from any smoking-allowed area to mix with air in or to be used in:

(a) any part of the facility defined as a place of public access in Section 26-38-2(1);

(b) another room designated as a non-smoking room; or

(c) common areas of the facility, including dining areas, lobby areas and hallways.

(d) If an operator of a lodging facility chooses to modify the status of a room from a smoking to a non-smoking room, then the operator shall perform a full deep cleaning of the room. The deep cleaning shall include cleaning of carpets, bedding, drapes, walls, and any other object in the room which absorbs smoking particles or smoking fumes. [

~~(3) Smoking may be permitted in vehicles that are workplaces when not occupied by nonsmokers.]~~

KEY: public health, indoor air pollution, smoking, ventilation

Date of Enactment or Last Substantive Amendment: ~~October 15, 2012~~ 2013

Notice of Continuation: April 2, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-1 et seq.; 26-38-1

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1-5

Incorporations by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37422

FILED: 03/21/2013

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 Utah Medicaid 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 Utah Medicaid Provider Manual; Speech-Language Services Utah Medicaid Provider Manual; Audiology Services Utah Medicaid Provider Manual; Hospice Care Utah Medicaid Provider Manual; Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual; Personal Care Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual; Office of Inspector General Administrative Hearings Procedures Manual; Pharmacy Services Utah Medicaid Provider Manual; and Coverage and Reimbursement Code Look-up Tool.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to incorporate the State Plan and approved State Plan Amendments (SPAs) by reference to 04/01/2013. These SPAs include SPA 13-001-UT, Pharmacy Services, which changes Medicaid coverage for barbiturates and

benzodiazepines for dual eligible beneficiaries by excluding coverage when Medicare Part D coverage for those products is in effect and Medicaid coverage overlaps under the State Plan; and SPA 13-004-UT Physician Services, which requires psychiatrists and other qualified prescribing providers to use evaluation and management procedure codes rather than the current unique code for psychiatric pharmacologic management for physician services. This rule change also incorporates by reference the Medical Supplies Utah Medicaid Provider Manual and the Hospital Services Utah Medicaid provider manual, effective 04/01/2013; incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Speech-Language Services Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Audiology Services Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Hospice Care Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 04/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Personal Care Utah Medicaid Provider Manual, with its attachments, effective 04/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 04/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 04/01/2013; Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, effective 04/01/2013; Office of Inspector General Administrative Hearings Procedures Manual, effective 04/01/2013; Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 04/01/2013; and Coverage and Reimbursement Code Look-up Tool, effective 04/01/2013.

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 Utah Medicaid Provider

Manual, published by Division of Medicaid and Health Financing, 04/01/2013

- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Utah Medicaid Provider Manual, Medical Supplies Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare & Medicaid Services, 04/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Personal Care Utah Medicaid Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Adds Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Speech-Language Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Audiology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Hospital Services Utah Medicaid Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Definitions found in the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 04/01/2013

- ◆ Updates Pharmacy Services Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Hospice Care Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2013
- ◆ Updates Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 04/01/2013

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 and in the Look-up Tool do 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 and in the Look-up Tool do 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 and in the Look-up Tool do 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 and in the Look-up Tool do 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 and in the Look-up Tool do 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 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

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.

The Department incorporates the ~~[January]~~April 1, 2013 versions of the following by reference:

(1) Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Manual ~~[and List]~~described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies~~[-with its referenced attachment, Medical Supplies List]~~, as applied in Rule R414-70;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Definitions ~~[and the attachment for the Private Duty Nursing Acuity Grid]~~found in the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Services Utah Medicaid Provider Manual;

(6) Audiology Services Utah Medicaid Provider Manual;

(7) Hospice Care Utah Medicaid Provider Manual;

(8) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(9) Personal Care Utah Medicaid Provider Manual with its attachments;

(10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

~~(16) Utah Home and Community-Based Waiver Services Autism Waiver~~ Utah Medicaid Provider Manual;

(1[6]7) Office of Inspector General Administrative Hearings Procedures Manual;~~[and]~~

(1[7]8) Pharmacy Services Utah Medicaid Provider Manual with its attachments~~[-]; and~~

(1[8]9) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[March 1,]~~ 2013

Notice of Continuation: March 2, 2012

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

Health, Family Health and Preparedness, Licensing **R432-31** Life with Dignity Order

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 37442

FILED: 03/25/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The previous version of the rule was separated into sections for different provider types and had different requirements for each section, resulting in some confusion for health care providers. The Governor's Commission on Aging recommended some changes to clarify the rule and to update requirements to current national standards of practice. This rule amendment was reviewed and approved on 02/13/2013 by the Health Facility Committee which has representation of the type of providers this rule would apply to.

SUMMARY OF THE RULE OR CHANGE: The amendments streamline the rule by creating the same requirements for all provider types. The amendments define policy and procedures that are required to be implemented in all licensed health care facilities in regards to the use of the Life with Dignity Form. One major change is that health facilities no longer need to offer Life With Dignity Forms to every

patient or resident; only those that have conditions outlined in the rule that may lead to the use of the form.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This rule amendment will have no effect on state budgets since there will be no change in current practice.
- ◆ LOCAL GOVERNMENTS: This rule amendment will have no effect on local government budgets since there will be no change in current practice.
- ◆ SMALL BUSINESSES: This rule amendment will have no effect on small businesses since there will be no change in current practice.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will have little or no impact on affected business because it simplifies statutorily required procedures currently in place.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-31. Life with Dignity Order.

R432-31-1. Authority and Purpose.

(1) This rule is adopted pursuant to Utah Code Title 26, Chapter 21, and Section 75-2a-106.

(2) This rule establishes the forms and systems for Life with Dignity Orders.

R432-31-2. Definitions.

The definitions found in Sections UCA 26-21-2 and 75-2a apply to this rule. In addition, "licensed health care facility" means a facility or entity licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

R432-31-3. Life with Dignity Order Forms.

(1) An individual who desires to execute a Life with Dignity Order must use a form or electronic format approved[erated] by the Department. The form may not be altered in layout or style, including font style and size, without the express written permission of the Department.

(2) Any person, health care provider or health care facility may obtain a form from the Department and, if made available by the Department, from a website established for that purpose.

(3) A health care provider, licensed health care facility, or EMS provider may act upon a copy of a Life with Dignity Order as if it were the original.

R432-31-4. Facility Policies and Procedures.[Facilities That Must Offer Life with Dignity Orders-Policies and Procedures.]

(1) ~~[The following]H[h]ealth care facilities must[emply with Subsection (2):~~

- ~~(a) a general acute hospital licensed under R432-100;~~
- ~~(b) a long-term acute care hospital licensed under R432-104;~~
- ~~(c) a nursing care facility licensed under R432-150;~~
- ~~(d) a mental disease facility licensed under R432-151;~~
- ~~(e) a mental retardation facility licensed under R432-152;~~
- ~~(f) a small health care facility (four to sixteen beds) licensed under R432-200;~~
- ~~(g) an assisted living facility licensed under R432-270;~~
- ~~(h) a small health care facility - type N licensed under R432-300;~~
- ~~(i) a hospice agency licensed under R432-750, whether inpatient or home-based;~~
- ~~(j) a critical access hospital licensed under R432-106;~~
- ~~(k) a home health agency licensed under R432-700; and~~
- ~~(l) a personal care agency licensed under R432-725.~~

(2) ~~Each facility described in Subsection (1) shall establish and implement[follow] policies and procedures that conform to Section 75-2a-106[and that assure that:].~~

(2) Health care facilities policies and procedures must assure that:

- (a) the facility determines upon admission whether each individual has a Life with Dignity Order;
- (b) the facility is not required to offer all individuals the opportunity to complete a Life With Dignity Order;

~~(c) the facility determines which [of those] individuals [who do not have a Life With Dignity Order should] may be offered the opportunity to complete a Life with Dignity Order, which may include individuals who;~~

~~(i) have a serious illness and are likely to face a life-threatening health crisis;~~

~~(ii) have specific preferences for end of life treatments; or~~

~~(iii) have declining cognitive abilities and lack a surrogate to make decisions for them;~~

~~(d[e]) the facility identifies circumstances under which an individual with a Life with Dignity Order shall be offered the opportunity to modify the order [the facility shall review for changes or amendments the Life with Dignity Order for each individual who has one];~~

~~(e[d]) the facility maintains the Life with Dignity Order [in a prominent location] in the individual's medical record [for each individual who has a Life with Dignity Order; and];~~

~~(f[e]) the facility identifies circumstances under which it would not follow a Life With Dignity Order; [-]~~

~~(g) only qualified providers, as per Utah Code 75-2a-106(2) assist with the completion of a Life With Dignity Order. Qualified providers include;~~

~~(i) the physician, advanced practice registered nurse, or physician assistant of the person to whom the life with dignity order relates; or~~

~~(ii) a health care provider who is acting under the supervision of a person described in Subsection (2)(g)(i) and is a licensed nurse, physician assistant, or mental health professional.~~

~~(h) a Life With Dignity order shall be signed personally by the physician or APRN, or, subject to 75-2a-106(11), physician assistant of the person to whom the life with dignity order relates;~~

~~(i) if the licensed health care facility's services do not include the supervision of a physician, physician assistant or advanced practice registered nurse, the facility shall make a referral to the primary care provider to create, replace or modify a Life With Dignity Order.~~

~~**[R432-31-5. Facilities Not Required to Offer Life with Dignity Orders-Policies and Procedures:**~~

~~(1) The following health care facilities must comply with Subsection (2):~~

~~(a) a specialty hospital - psychiatric licensed under R432-101;~~

~~(b) a specialty hospital - chemical dependency/substance abuse licensed under R432-102;~~

~~(c) a freestanding ambulatory surgical center licensed under R432-500;~~

~~(d) a specialty hospital - rehabilitation licensed under R432-103;~~

~~(e) an orthopedic hospital licensed under R432-105;~~

~~(f) a birthing center licensed under R432-550;~~

~~(g) an abortion clinic licensed under R432-600; and~~

~~(h) an end stage renal disease facility licensed under R432-650.~~

~~(2) Each facility described in Subsection (1) shall establish and follow policies and procedures that conform to Section 75-2a-106 and that assure that:~~

~~(a) the facility determines upon admission whether each individual has a Life with Dignity Order;~~

~~(b) the facility maintains the Life with Dignity Order in a prominent location in the individual's medical record for each individual who has a Life with Dignity Order.~~

~~**[R432-31-5[6]. Training.**~~

~~Each licensed health care facility shall appropriately train relevant health care, quality improvement, and record keeping staff on the requirements of Title 75, Chapter 2a, the Advance Health Care Directive Act; this rule; and the facility's policies and procedures established pursuant to this rule.~~

~~**[R432-31-6[7]. Transferability of Life with Dignity Orders.**~~

~~(1)(a) A Life with Dignity Order is fully transferable between all licensed health care facilities.~~

~~(b) The health care providers assuming the individual's care at the receiving licensed health care facility shall read the Life with Dignity Order.~~

~~(c) The receiving provider must have policies and procedures to address the circumstances under which the provider will not follow the instructions contained in the Life With Dignity Order.~~

~~(2)(a) A licensed health care facility that discharges, but does not transfer to another licensed health care facility, an individual who has a Life with Dignity Order, shall provide a copy of the individual's Life with Dignity Order to the individual or, if the individual lacks the capacity to make a health care decision, as defined in section 75-2a-104, to the individual's surrogate.~~

~~(b) A licensed health care facility that transfers an individual with a Life with Dignity Order to another licensed health care facility shall provide a copy of the Life with Dignity Order to the receiving licensed health care facility.~~

~~(3) A licensed health care facility shall allow an individual to complete, amend, or revoke a Life with Dignity Order at any time upon request.~~

~~**[R432-31-7[8]. Presentation of Life with Dignity Orders to EMS Personnel.**~~

~~(1) Except for home health agencies, personal care agencies and home-based hospice, a licensed health care facility in possession of a Life with Dignity Order must present the individual's Life with Dignity Order to EMS personnel upon the arrival of EMS personnel who are present to treat or transport the individual; and~~

~~(2) For an individual who resides at home, if home health agency, personal care agency or home-based hospice personnel are present when EMS personnel arrive at the home, the personnel must present the individual's Life with Dignity Order, upon the arrival of the EMS personnel who are present to treat or transport the individual.~~

~~**[R432-31-8[9]. Home Placement of Life with Dignity Orders.**~~

~~(1) If an individual under the care of a home health agency, personal care agency or a hospice agency possesses a Life with Dignity Order, the agency must ensure that a copy of the Life with Dignity Order is left at the individual's place of residence.~~

~~(2) For an individual adult who resides at home, including an emancipated minor, it is recommended that a copy of the Life with Dignity Order be posted on the front of the refrigerator or over the individual's bed.~~

~~(3) For a minor who resides at home, it is recommended that a copy of the Life with Dignity Order be placed in a tube and placed on the top shelf of the door of the refrigerator.~~

R432-31-2[10]. Life with Dignity Bracelets and Necklaces.

(1) The Department may contract with a vendor or vendors to provide an approved Life with Dignity bracelet or necklace.

(2) An individual with a Life with Dignity Order may obtain an approved Life with Dignity bracelet or necklace from a vendor approved by the Department. The approved Life with Dignity bracelet or necklace identifies the individual to EMS or other health care providers as possessing a Life with Dignity Order.

R432-31-10[4]. Prior Orders and Out of State Orders.

(1) EMS and other health care providers may recognize as valid all POLST, Life With Dignity and EMS/DNR orders, including bracelets and necklaces, unless superseded by a subsequent Life with Dignity Order or POLST.

(2) Licensed health care facilities must ensure that all individuals receiving services who have current POLST/Life With Dignity Orders, receive assistance to complete new orders to comply with current rule requirements by January 31, 2011.

(3) Physicians may complete and sign new Life With Dignity Orders for individuals with prior forms who no longer have capacity to complete new orders, and who do not have a surrogate/guardian to authorize the new order. The physician must indicate on the new order that the individual's preferences from the prior order are still applicable.

(4) A form that an individual executed while in another state may be honored as if it were executed in compliance with this rule and Section 75-2a-106 if it:

- (a) is substantially similar to a Life with Dignity Order or a Physician's Order for Life Sustaining Treatment; and
- (b) was executed according to the laws of that state.

KEY: POLST, do not resuscitate, Life with Dignity Order
Date of Enactment or Last Substantive Amendment: [~~October 1, 2011~~2013
Notice of Continuation: March 28, 2012
Authorizing, and Implemented or Interpreted Law: 26-21; 75-2a-106

Pardons (Board of), Administration
R671-312
Commutation Hearings for Death
Penalty Cases

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 37438
 FILED: 03/22/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule lays out the general guidelines for those who wish to petition the Board of Pardons for a death penalty commutation.

SUMMARY OF THE RULE OR CHANGE: This rule change involves the splitting of the original Rule R671-312 into three rules; this part of the rule is becoming a general guideline for the death penalty commutation process and procedure, and the other two determine processes and procedures specific to each of the two categories of death penalty cases. Two filings that take language from Rule R671-312 are published in this Bulletin and address "Commutation Procedures Applicable to Persons Sentenced to Death Before April 26, 1992" (Rule R671-312A) and "Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992" (Rule R671-312B). (DAR NOTE: The proposed new Rule R671-312A is under DAR No. 37439 and the proposed new Rule R671-312B is under DAR No. 37440 in this issue, April 15, 2013, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 77-19-8 and Section 77-27-2 and Section 77-27-4 and Section 77-27-5 and Section 77-27-5.5 and Section 77-27-8 and Section 77-27-9 and Section 77-27-9.5

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
- ◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
- ◆ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no

fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-312. Commutation Hearings for Death Penalty Cases.

R671-312-1. General Applicability [~~of Rules to Petitioners~~].

The provisions and procedures set forth below are of general applicability to all petitions filed with the Utah Board of Pardons and Parole (Board) seeking the commutation of a death sentence.

(1) Any person, individually or through counsel, who has been sentenced to death by a court in this state may petition the Board for commutation of the death sentence.

(2) No person has a right, privilege, or entitlement to commutation or clemency; nor to the scheduling of a commutation hearing. Nothing in this rule may be interpreted to convey any right or expectation of commutation, clemency, or to a commutation hearing. The decision to schedule a commutation hearing is within the exclusive power and authority of the Board.

(3) Petitions for commutation of a death sentence shall be governed by applicable state constitutional provisions, statutes, this rule, and other Board administrative rules as applicable.

(4) Any document, pleading, notice, attachment or other item submitted as part of the commutation petition, response, or subsequent pleadings shall be delivered to and filed with the Board's Administrative Coordinator at the Board's offices.

(5) Upon the filing of a commutation petition, and throughout the duration of all commutation proceedings, any communication to the Board by any party or party's counsel should be directed to the Board's Administrative Coordinator. Any communication from the Board to any party or counsel will be directed through the Board's Administrative Coordinator. This section does not

apply to Board communications with its own legal counsel as assigned by the Attorney General.

(6) A commutation petition, any response thereto, and any subsequent pleading, or document submitted to the Board for consideration in relation to a commutation petition is considered a public document, unless the document is determined by the Board to be controlled, protected, or private, pursuant to any other statute, law, rule, or prior case law.

(7) Any order issued by the Board relating to a commutation petition is a public document.

(8) If the petitioner's execution is stayed by any court, after a commutation petition has been filed with the Board, but prior to commencement of any commutation hearing, all commutation proceedings before the Board shall cease.

(9) If the petitioner's execution is stayed by any court after a commutation hearing has commenced, the hearing may continue, and the Board may render its decision.

(10) As used in this rule, "day" means a regular calendar day, including weekends and holidays.

(11) As used in this rule, "Petitioner" means the person whose death sentence is sought to be commuted by the filing of a commutation petition with the Board.

(12) The Board may summarily deny, with or without a response or objection from the State, any commutation petition without a hearing.

(13) Procedures applicable to commutation petitions for any person sentenced to [the] death [penalty] by a court in this state prior to April 26, 1992, [will be] are governed by Rule R671-312A[-2]. Procedures applicable to commutation petitions for any person sentenced to [the] death [penalty] by a court in this state after April 26, 1992, [will be] are governed by Rule R671-312B[-3].

(14) If the Board deems necessary and appropriate, the Board may temporarily stay an execution to fully hear a petition for commutation.

~~[R671-312-2. Commutation Procedures Applicable to Persons Sentenced to Death Before April 26, 1992.~~

~~(1) A person sentenced to death, or his counsel, may file a petition for commutation no later than seven days after the sentencing court has issued a judgment of death or a warrant of execution after completion of the person's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack.~~

~~(2) The commutation petition shall be signed by the person sentenced to death and filed at the offices of the Board of Pardons and Parole "Board" no later than seven days after the sentencing court signs a warrant setting an execution date. The petitioner or his counsel shall mail a copy of the petition, by United States Mail, postage prepaid, to the Attorney General or his designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the State, and may include hand delivery, facsimile transmission, electronic mail, or other electronic transmission.~~

~~(3) If the execution date is stayed by any court between the time of the sentencing court's issuance of the execution judgment or warrant and the beginning of the commutation hearing, the commutation proceeding shall terminate. If the execution date is stayed during the commutation hearing, the hearing may continue and the Board may render its decision in accordance with this rule.~~

~~(4) The petition shall include:~~

~~_____ (a) the petitioner's name and the name and address of any attorney who is representing the petitioner in the commutation proceeding;~~

~~_____ (b) a statement of the reasons or grounds which petitioner believes support the commutation of the death sentence;~~

~~_____ (c) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses petitioner intends to call and a summary of their anticipated testimony.~~

~~_____ (5) If the petitioner previously received a commutation hearing, the petition shall include a statement reciting what, if any, new significant and previously unavailable information exists which supports commutation and the reasons this information requires a new hearing.~~

~~_____ (6) The Board may temporarily stay an execution to fully hear the petition for commutation.~~

~~_____ (7) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or his designee, shall file a response to the petition with the Board. The State shall file with the Board and mail, via United States mail, postage prepaid, or hand deliver to the petitioner and his counsel, if represented, the State's response, along with copies of all written evidence, and the names of the witnesses, and a summary of the anticipated testimony upon which the State intends to rely on to rebut petitioner's claim that the sentence of death should be commuted. The Board may request either the petitioner or the State to provide additional information.~~

~~_____ (8) Within three business days of receiving the State's response, the Board will hold a pre-hearing conference to identify and set the witnesses to be called, clarify the issues to be addressed, and take any other action it considers necessary and appropriate to control and direct the proceedings.~~

~~_____ (9) If not otherwise called as a witness, a victim representative, as defined by Administrative Rule R671-203-1, shall be afforded the opportunity to attend the commutation hearing, and to present testimony regarding the commutation of the death sentence, in accordance with, and subject to the provisions of Administrative Rule R671-203-4(A-C, and F).~~

~~_____ (10) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's attorney, or the State's attorney. The role of the State's attorney is limited to rebutting the petitioner's claim and otherwise assisting the Board in determining all facts relevant to the inquiry. The Rules of Evidence do not apply to the commutation hearing.~~

~~_____ (11) In conducting the commutation hearing:~~

~~_____ (a) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case.~~

~~_____ (b) The Board will record the commutation hearing in accordance with Utah Code Ann. Subsection 77-27-8(2).~~

~~_____ (c) Administrative Rule R671-302 "News Media and Public Access to Hearings" will govern media and public access to the hearing.~~

~~_____ (d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.~~

~~_____ (12) The Board will reconvene in open session to announce and distribute its written decision.~~

~~R671-312-3.— Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992.~~

~~_____ (1) A person sentenced to death, or his counsel, may file a petition for commutation anytime after the sentencing court has issued a judgment of death or a warrant of execution after completion of the person's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack.~~

~~_____ (2) The commutation petition shall be signed by the person sentenced to death and filed at the offices of the Board no later than seven days after the sentencing court signs a warrant setting an execution date. The petitioner or his counsel shall mail a copy of the petition, by United States Mail, postage prepaid, to the Attorney General or his designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the State, and may include hand delivery, facsimile transmission, electronic mail or electronic transmission.~~

~~_____ (3) If the execution date is stayed by any court between the time of the sentencing court's issuance of the execution judgment or warrant and the beginning of the commutation hearing, the commutation proceeding may terminate. If the execution date is stayed during the commutation hearing, the hearing will continue and the Board may render its decision in accordance with this rule.~~

~~_____ (4) The petition shall include:~~

~~_____ (a) the petitioner's name and name and address of any attorney who is representing the petitioner in the commutation proceeding;~~

~~_____ (b) a statement of the reasons or grounds which petitioner believes support the commutation of the death sentence;~~

~~_____ (c) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses petitioner intends to call and a summary of their anticipated testimony.~~

~~_____ (d) a statement specifying whether any of the reasons stated as reasons or grounds for commutation have been reviewed by a court or courts of competent jurisdiction;~~

~~_____ (e) a statement, if new information is alleged, explaining why the reasons the information is considered new, why the new information was not or could not have been reviewed during the judicial process, and why the new information is not still subject to judicial review;~~

~~_____ (f) a statement, if legal or constitutional reasons for commutation are claimed, setting forth the reasons that the provision of Utah Code Ann. Section 77-27-5.5(6) does not prohibit the Board from considering the purported legal or constitutional issues.~~

~~_____ (5) If petitioner previously received a commutation hearing, the petition shall set forth what, if any, new significant and previously unavailable information exists which supports commutation and the reasons this information requires a new hearing.~~

~~_____ (6) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or his designee shall file a response with the Board. The State's response shall be mailed, via United States mail, postage prepaid, or hand delivered to the petitioner and his counsel, if represented. The state's response to the petition shall include copies of all written evidence, and the names of the witnesses, and a summary of the anticipated testimony upon which the State intends to rely to either challenge petitioner's right to~~

~~commutation hearing or to rebut petitioner's claim that the sentence of death should be commuted. The Board may request either the petitioner or the State to provide additional information.~~

~~(7) If the Board believes that it cannot consider the claims pursuant to Utah Code Ann. Section 77-27-5.5, it shall deny the petition.~~

~~(8) If the Board determines the petition does not present a substantial issue for commutation, it shall deny the petition.~~

~~(9) If the Board determines the petition presents a substantial issue for commutation, which has not been reviewed in the judicial process, a commutation hearing shall be scheduled as soon as reasonably possible.~~

~~(10) The Board may temporarily stay an execution to fully hear the petition for commutation.~~

~~(11) Within three business days of determining the petition presents a substantial issue for commutation which has not been reviewed in the judicial process, the Board shall hold a pre-hearing conference to identify and set the witnesses to be called, clarify the issues to be addressed, and take any other action it considers necessary and appropriate to control and direct the proceedings.~~

~~(12) If not otherwise called as a witness, a victim representative, as defined by Administrative Rule R671-203-1, shall be afforded the opportunity to attend the commutation hearing, and to present testimony regarding the commutation of the death sentence, in accordance with, and subject to the provisions of Administrative Rule R671-203-4(A-C, and F).~~

~~(13) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's attorney, and the State's attorney. The role of the State's attorney is limited to challenge the petitioner's right to a commutation hearing and rebutting petitioner's claim and otherwise assisting the Board in determining all facts relevant to the inquiry. The Rules of Evidence do not apply to the commutation hearing.~~

~~(14) In conducting the commutation hearing:~~

~~(a) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case.~~

~~(b) The Board will record the commutation hearing in accordance with Utah Code Ann. Subsection 77-27-8(2).~~

~~(c) Administrative Rule R671-302 "News Media and Public Access to Hearings" will govern media and public access to the hearing.~~

~~(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.~~

~~(15) The Board will reconvene in open session to announce and distribute its written decision.~~

]

KEY: capital punishment

Date of Enactment or Last Substantive Amendment: [February 25, 2009]2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: [77-19-7;] Art VII, Sec 12; 77-19-8; 77-27-2; 77-27-4; 77-27-5; 77-27-5.5; 77-27-8; 77-27-9; 77-27-9.5.

Pardons (Board of), Administration
R671-312A
Commutation Procedures Applicable to
Persons Sentenced to Death Before
April 26, 1992

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 37439

FILED: 03/22/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule lays out the commutation guidelines and procedures applicable to persons sentenced to death before April 26, 1992.

SUMMARY OF THE RULE OR CHANGE: This new rule involves the splitting of the original Rule R671-312 into three rules; this part of the rule is one of the two filings that take language from Rule R671-312 and are published in this Bulletin and address "Commutation Procedures Applicable to Persons Sentenced to Death Before April 26, 1992" (this rule) and "Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992" (Rule R671-312B). (DAR NOTE: The proposed amendment to Rule R671-312 is under DAR No. 37438 and the proposed new Rule R671-312B is under DAR No. 37440 in this issue, April 15, 2013, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 77-19-7 and Section 77-27-5 and Section 77-27-8

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this new rule will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this new rule will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this new rule will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this new rule will have no fiscal impact and will

impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this new rule, and finds that there is no fiscal impact on businesses because of this new rule. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-312A. Commutation Procedures Applicable to Persons Sentenced to Death Before April 26, 1992.

R671-312A-1. Scope of Rule.

Board of Pardons and Parole Administrative Rule R671-312 governs all petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this rule R671-312A governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death before April 26, 1992.

R671-312A-2. Eligibility.

(1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death or a warrant of execution.

(2) If any appeal of the petitioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of all such appeals of the conviction or sentence and collateral challenges or lawsuits, including, but not limited to all proceedings seeking post-conviction relief, habeas corpus relief, or other proceedings for extraordinary relief.

(3) Failure of any petitioner or counsel to comply with this rule, all other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.

(4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-312A-3. Petition Requirements.

(1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board's Administrative Coordinator at the offices of the Board no later than seven days after the sentencing court signs a warrant setting an execution date.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103, Attorneys.

(d) The petitioner or counsel shall hand-deliver a copy of the petition to the Utah Attorney General or designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the state, and may include facsimile transmission, electronic mail, or other electronic transmission.

(2) The commutation petition shall include:

(a) the petitioner's name, date of birth, and Department of Corrections offender number;

(b) the name, address, telephone number, and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(c) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(d) a certified copy of the Warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;

(e) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was the subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeas corpus, or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations and appellate decisions regarding such litigation;

(g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence; and

(h) copies of all written evidence upon which the petitioner intends to rely at the hearing along with the names of all witnesses the petitioner intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports a second, subsequent, or new hearing.

(4) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or designee, shall file a response to the petition. The State shall file its response to the commutation petition with the Board and hand deliver a copy of the response to the petitioner and counsel, if represented.

(a) The state's response shall include copies of all written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the State intends to rely to rebut the petitioner's claim that the sentence of death should be commuted.

(b) The Board may request either the petitioner or the state to provide additional information.

R671-312A-4. Preliminary Determinations and Procedures.

(1) The Board, after considering the original commutation petition and the state's response, may grant a commutation hearing or may deny the petition without further pleadings, response, hearing, or submissions.

(2) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.

(3) If the Board grants a commutation hearing, the Board Chair or a Board Member designated by the Chair, will:

(a) schedule and hold a pre-hearing conference with the petitioner's counsel and the state's counsel in order to schedule the commutation hearing;

(b) identify the witnesses to be called;

(c) clarify the issues to be addressed; and

(d) take any other action deemed necessary and appropriate to conduct the commutation hearing and proceedings.

R671-312A-5. Commutation Hearing Procedures.

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

(a) the victim's representatives;

(b) the police agency which investigated the offenses for which commutation has been petitioned;

(c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and

(d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Public notice of the commutation hearing will also be made via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Section R671-203-1, shall be afforded the opportunity to attend the commutation hearing and to present testimony regarding the commutation petition, in accordance with, and subject to the provisions of Subsections R671-203-4 A through C, and E.

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the state's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, all evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make all final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place all witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, News Media and Public Access to Hearings, will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel, or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

R671-312A-6. Commutation Decision.

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court that entered the sentence or conviction that is the subject of the commutation petition.

KEY: capital punishment, commutation

Date of Enactment or Last Substantive Amendment: 2013

Authorizing, and Implemented or Interpreted Law: Art VII, Sec 12; 77-19-8; 77-27-2; 77-27-4; 77-27-5; 77-27-5.5; 77-27-8; 77-27-9; 77-27-9.5.

Pardons (Board of), Administration
R671-312B
 Commutation Procedures Applicable to
 Persons Sentenced to Death After April
 26, 1992

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 37440

FILED: 03/22/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule lays out the commutation guidelines and procedures applicable to persons sentenced to death after April 26, 1992.

SUMMARY OF THE RULE OR CHANGE: This new rule involves the splitting of the original Rule R671-312 into three rules; this part of the rule is one of the two filings that take language from Rule R671-312 and are published in this Bulletin and address "Commutation Procedures Applicable to Persons Sentenced to Death Before April 26, 1992" (Rule R671-312A) and "Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992" (this rule). (DAR NOTE: The proposed amendment to Rule R671-312 is under DAR No. 37438 and the proposed new Rule R671-312A is under DAR No. 37439 in this issue, April 15, 2013, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 77-27-5 and Section 77-27-5.5 and Section 77-27-8

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this new rule will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this new rule will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this new rule will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this new rule will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this new rule, and finds that there is no fiscal impact on businesses because of this new rule. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-312B. Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992.
R671-312B-1. Scope of Rule.

Board of Pardons and Parole Administrative Rule R671-312 governs all petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this rule R671-312B governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death after April 26, 1992.

R671-312B-2. Eligibility.

(1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death or a warrant of execution.

(2) If any appeal of the petitioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of all such appeals of the

conviction or sentence and collateral challenges or lawsuits, including, but not limited to all proceedings seeking post-conviction relief, habeus corpus relief, or other proceedings for extraordinary relief.

(3) Failure of any petitioner or counsel to comply with this rule, all other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.

(4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings, may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-312B-3. Petition Requirements.

(1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board's Administrative Coordinator at the offices of the Board no later than seven days after the sentencing court signs a warrant setting an execution date.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103, Attorneys.

(d) The petitioner or counsel shall hand-deliver a copy of the petition to the Utah Attorney General or designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the state, and may include facsimile transmission, electronic mail, or other electronic transmission.

(2) The commutation petition shall include:

(a) the petitioner's name, date of birth, and Department of Corrections offender number;

(b) the name, address, telephone number, and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(c) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(d) a certified copy of the Warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;

(e) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was appealed, and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was the subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeus corpus, or any other extraordinary relief, and if so, a copy of all applicable final orders, rulings, determinations, and appellate decisions regarding such litigation;

(g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence;

(h) a statement certifying whether any of the reasons stated as reasons or grounds for commutation have been reviewed by a court or courts of competent jurisdiction, and if reviewed by any court, a citation to the record indicating such review;

(i) a statement, if new information is alleged, explaining why the information is considered new, why the information was not or could not have been reviewed during the judicial process, and why the information is not still subject to judicial review;

(j) a statement, if legal or constitutional reasons for commutation are claimed, setting forth the reasons that the provisions of Utah Code Ann. Section 77-27-5.5(6) do not prohibit the Board from considering the purported legal or constitutional issues; and

(k) copies of all written evidence upon which the petitioner intends to rely at the hearing along with the names of all witnesses the petitioner intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports a second, subsequent, or new hearing.

(4) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or designee, shall file a response to the petition. The State shall file its response to the commutation petition with the Board and hand deliver a copy of the response to the petitioner and counsel, if represented.

(a) The state's response shall include copies of all written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the State intends to rebut the petitioner's claim that the sentence of death should be commuted.

(b) The Board may request either the petitioner or the state to provide additional information.

R671-312B-4. Preliminary Determinations and Procedures.

(1) If the Board believes that it cannot consider the claims pursuant to Utah Code Ann. Section 77-27-5.5, it shall deny the petition.

(2) If the Board determines the petition does not present a substantial issue for commutation, it shall deny the petition.

(3) If the Board determines the petition presents a substantial issue for commutation, which has not, or could not have been reviewed by the judicial process, the Board may grant a commutation hearing or deny the petition without further pleadings, response, hearing, or submissions.

(4) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.

(5) If the Board grants a commutation hearing, the Board Chair or a Board Member designated by the Chair, will:

(a) schedule and hold a pre-hearing conference with the petitioner's counsel and the state's counsel in order to schedule the commutation hearing;

(b) identify the witnesses to be called;

(c) clarify the issues to be addressed; and

(d) take any other action deemed necessary and appropriate to conduct the commutation hearing and proceedings.

R671-312B-5. Commutation Hearing Procedures.

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

(a) the victim's representatives;

(b) the police agency which investigated the offenses for which commutation has been petitioned;

(c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and

(d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Notice of the commutation hearing will be provided to the public via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Rule R671-203-1, shall be afforded the opportunity to attend the commutation hearing, and to present testimony regarding the commutation of the death sentence, in accordance with, and subject to the provisions of Subsections R671-203-4 A through C, and F.

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the state's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, all evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make all final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place all witnesses under oath and may impose a time limit on each side for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, News Media and Public Access to Hearings, will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

R671-312B-6. Commutation Decision.

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court that entered the sentence or conviction that is the subject of the commutation petition.

KEY: capital punishment, commutation

Date of Enactment or Last Substantive Amendment: 2013

Authorizing, and Implemented or Interpreted Law: Art VII, Sec 12; 77-19-8; 77-27-2; 77-27-4; 77-27-5; 77-27-5.5; 77-27-8; 77-27-9; 77-27-9.5.

Pardons (Board of), Administration **R671-315** Pardons

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37455

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to articulate the circumstance under which a person may seek a pardon and the circumstance, procedures, and policies under which the Board may grant or deny those pardon requests.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies Board procedures with regard to pardon applications.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII Sec 12 and Section 77-27-1 et seq. and Section 77-27-5 and Section 77-27-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-315. Pardons.

R671-315-1. Pardons.

~~[A pardon is a discretionary act of executive clemency granted by the Board of Pardons and Parole, which forgives the wrongdoer and absolves the wrongdoer of all direct and/or collateral legal consequences of the crime(s) of conviction.] A pardon is an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a consequence of conviction or punishment for a criminal offense.~~

A. The Board may consider an petition application for a pardon from any individual who ~~[was]has been convicted [or sentenced for]~~ of an offense in the state of Utah, after the applicant has exhausted all judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction. The Board generally will accept[s] and consider[s] a pardon petition application only ~~[when]after at least five years has passed since the sentence for the conviction has been terminated or expired[for at least five years].~~

1. Any person seeking a pardon from the Board must complete and file, to the Board's satisfaction, an application in a form approved by the Board.

~~[1]2. [The Board's designee]In addition to the completed application, Board staff shall obtain and provide relevant information that shall include but not be limited to:~~

~~(a) [a completed application on a form approved by the Board;~~

~~(b) all police reports concerning the conviction[for the crime(s)] for which the applicant is seeking a pardon;~~

~~(c) all pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any conviction[crime(s)] for which the applicant is seeking a pardon;~~

~~(d) the applicant's inmate files;~~

~~(e) a recent BCI report, NCIC report, and III report concerning the applicant;~~

~~(f) the applicant's employment history;~~

~~(g) verification that all imposed restitution, fines, fees, or surcharges have been paid in full; and~~

~~(h) verification that the applicant completed therapy programs ordered by any court or by the Board.~~

2. ~~[The Board's designee] staff shall summarize this information [and upon review the Board may request additional information]and[. The Board designee shall] provide [this information]the application and additional information to the Board within [sixty]60 days from the date the completed [petition]application and all required information and documentation was received. The Board may request additional information from staff or from the applicant.~~

3. The Board shall consider the petition pardon application and all available information relevant to it and vote to grant or deny a hearing.

(a) If a pardon hearing is granted the hearing should be held within [sixty]60 days, or as soon thereafter as practicable, of the Board's decision to grant a pardon hearing.

4. The Board shall publish notice of the pardon hearing on its web site and on the Utah Public Notice web site.

B. Upon scheduling a pardon hearing, [if the Board decides to consider the granting of a pardon, a hearing will be scheduled with appropriate] notice shall be given to victim[s] of record if they can be located, the chief law enforcement officer of the arresting agency, the presiding judge where the conviction was entered, and the County, District, or City Attorney where the case was prosecuted.

C. The Board may grant a conditional pardon or an unconditional pardon. The petitioner will be notified in writing of the results as soon as practicable.

D. The Board may grant or deny a pardon by majority vote. Pardon decisions are final and are not subject to judicial review.

E. The Board may dispense with any requirement created by this ~~[R]rule for[if] good cause[exists].~~

KEY: pardons

Date of Enactment or Last Substantive Amendment: ~~[October 4, 2012]2013~~

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: 77-27-1 et seq.; 77-27-5; 77-27-9; Art VII Sec 12

Pardons (Board of), Administration
R671-509
Parole Progress / Violation Reports

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 37456
 FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to detail the process through which the Board is provided parole progress reports and the procedures and the circumstances under which parole may be revoked.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the process through which the Board is provided parole progress reports and the procedures and the circumstances under which parole may be revoked by the Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-509. Parole Progress / Violation Reports.
R671-509-1. Progress / Violation Reports.

(1) A parole agent or other representative of the Department of Corrections shall submit ~~[to the Board]~~ a parole progress / violation report to the Board when an incident occurs that may constitute[s] cause to modify the conditions of or revoke parole~~[-]~~, including: ~~[—Examples of incidents which shall be reported to the Board via a parole progress / violation report are:]~~

- a. an arrest or ~~[C]~~ conviction of any misdemeanor or felony;
- b. ~~[S]~~ significant violations of the general or special conditions of parole; and ~~[-]~~
- c. ~~[A]~~ an incident which results in the parole agent placing the parolee in jail, under arrest, in detention, or other conditions or incidents which result in the parolee being denied liberty.

(2) These reported parole violations shall be investigated and all incident reports~~[(s)]~~ along with a recommended course of action shall be submitted to the Board within 72 hours of confinement or, if the parolee is not confined, detained or arrested, within seven ~~[(7)]~~ days from the date of the violation.

(3) The report shall advise the Board of a parolee's adjustment to parole and provide reasons for modification of the parole agreement conditions. Police reports, court orders, and waivers of personal appearance from parolees shall be attached when applicable.

KEY: parole, incidents

Date of Enactment or Last Substantive Amendment: [~~October 13, 2008~~]2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-11

Pardons (Board of), Administration **R671-510** Evidence for Issuance of Warrants

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37457

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to detail the process and the circumstances under which a warrant may be requested and/or issued, and also articulates what information must be provided to the Board, what evidence is required, and how information may be updated.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies process and the circumstances under which a warrant may be requested and/or issued, and also articulates what information must be provided to the Board, what evidence is required, and how information may be updated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-510. Evidence for Issuance of Warrants.

R671-510-1. Evidence for Issuance of Warrants.

(1) Board Warrants shall be issued only upon a showing that there is probable cause to believe that a parole violation has occurred.

(2) A certified Warrant Request shall be submitted by the parole agent setting forth facts that establish probable cause[reasons] to believe that the [~~named~~]parolee committed specific parole violations.

_____ (a) The warrant request may be accompanied by supporting documentation such as police reports, incident reports, and judgment ~~[and]~~ or commitment orders.

_____ (3) Upon approval of the request by the Board, a Warrant of Arrest shall be issued to arrest, detain, and return the parolee to ~~[actual]~~ custody ~~[the parolee named therein].~~

R671-510-2. Warrant Request.

Warrant requests shall include:

- a. the name of the parolee, offender number, and date of birth;
- b. the nature of the allegations that justify possible revocation of parole;
- c. the elements substantiating probable cause for each allegation which should include how, when, where, and what occurred;
- d. the condition of the parole agreement that the parolee is alleged to have violated, along with the date and location where the violation occurred;
- e. the legible name, signature, and telephone number of the parole officer and supervisor; and
- f. under separate or additional ~~[the fax]~~ cover, ~~[sheet will include the]~~ contact information and phone ~~[number or]~~ numbers ~~[where]~~ for the reporting agent ~~[can be contacted if needed].~~

R671-510-3. ~~[Background Information]~~ Parole Information.

The agent shall, on a form approved by the Board, provide the Board with the following information:

- (a) the parolee's risk/need assessment level at the time of the current violation and a summary of the areas of concern;
- (b) the number of prior paroles;
- (c) the parolee's parole violation history;
- (d) the parolee's custody status;
- (e) financial obligation details regarding the parolee;
- (f) the parolee's address or living arrangements;
- (g) the parolee's treatment summary;
- (h) the results of any drug or alcohol tests;
- (i) any new referred offenses or new criminal charges;
- (j) any aggravating factors concerning the parolee;
- (k) any mitigating factors concerning the parolee; and
- (l) a summary of the parolee's current parole performance.

~~[The agent will also give the Board background information about the parolee, including overall status, adjustment to parole, and any other information requested in the warrant request form, which the Board shall promulgate. The background information shall accompany the warrant request if it can be completed in time. If it cannot be completed by the time the warrant is submitted, the agent shall send it to the Board, and the parolee, within seven (7) days after issuance of the warrant.]~~

R671-510-4. Update Information.

(1) ~~Once the parolee is detained on [the] a Board warrant, the agent [will] shall track the case and keep the Board informed of any changes in status or circumstance of the allegations or parolee. [notify the Board of updates.]~~

(2) ~~No less than seven [(7)-] days prior to the hearing, the agent [will] shall send the Board all updated information and any amended allegations and recommendations. [to the Board all updated allegations and recommendations and any other information needed to ensure that full information regarding allegations and general parole~~

~~performance is in the file prior to the hearing.] The agent shall provide the offender with a copy of the updated information no less than seven days prior to the hearing. [The agent will also serve updated allegations and disclose general information to the incarcerated parolee no less than seven (7) days prior to the parole violation hearing.]~~

_____ (3) At its discretion, the Board may dismiss the allegations ~~[&]~~ if the updated information is not received in a timely manner.

KEY: warrants, parole, probable cause

Date of Enactment or Last Substantive Amendment: ~~[October 13, 2008]~~ 2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-11

Pardons (Board of), Administration **R671-512** Execution of the Warrant

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 37458

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to articulate the process to be followed when executing a warrant.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the agent's role in the process to be followed when executing a warrant, as well as clarifying the warrant execution process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Section 77-27-27 and Section 77-27-28 and Section 77-27-29 and Section 77-27-30

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-512. Execution of the Warrant.

R671-512-1. Execution of the Warrant.

~~[_____When the agent executes the warrant, or as soon thereafter as possible, the agent shall provide the parolee copies of the warrant and the warrant request. At the same time, the agent shall also provide the parolee with a Notice Regarding Parole Allegations, a Challenge to Probable Cause Determination, an Affidavit of Waiver and Plea of Guilt, and Waiver of Time.~~

]_____ (1) When an agent executes a Board warrant, the agent shall provide the parolee with copies of the warrant, the warrant request/parole violation report, and a form with which the parolee may challenge the evidence or allegations which were used to show probable cause for the warrant.

(2) If applicable, the agent shall provide an affidavit of waiver and pleas of guilt, along with a time waiver.

(3) If the parolee refuses to accept any of the aforementioned documents, the agent shall document the refusal of service on the Acknowledgement of Receipt form.

KEY: parole, warrants

Date of Enactment or Last Substantive Amendment: [~~October 13, 2008~~2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-11; 77-27-27; 77-27-28; 77-27-29; 77-27-30

Pardons (Board of), Administration **R671-513** Expedited Determination of Parolee Challenge to Probable Cause

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37458

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule details the process through which, and the circumstances under which, a parolee can challenge the determination of probable cause, lays out procedures for review of evidence, as well as the Board's procedure for handling the request.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the process through which, and the circumstances under which, a parolee can challenge the determination of probable cause as well as clarifying the Board's procedure for handling the request.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Section 77-27-27 and Section 77-27-28 and Section 77-27-29 and Section 77-27-30 and Subsection 77-27-9(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-513. Expedited Determination ~~of~~ Parolee Challenge to Probable Cause.

R671-513-1. Expedited Determination ~~of~~ Parolee Challenge to Probable Cause.

1. ~~Within seven (7) days of arrest and detention on the warrant, i~~ If ~~a~~ the parolee who is returned to custody for a parole violation wishes to challenge the probable cause statements or evidence upon which the warrant request was based ~~[determination]~~, the parolee shall submit the challenge in writing, accompanied by evidence supporting ~~[evidence to substantiate]~~ the challenge, within seven days of arrest or detention on the warrant.

2. At least one member of the Board shall review all the evidence in support of the parole violation allegations, as well as the ~~[parolee's] challenge and evidence [submissions]~~ submitted in support of the challenge, [in dispute of the allegations] and decide whether probable cause for the violation allegations continues to exist.

3. The parolee also shall inform the Board and the parole agent in writing if any evidence relating to possible defenses to the alleged parole violation exists and must ~~[needs to]~~ be preserved ~~[from the locale in which the violation was committed]~~. The request to preserve evidence ~~[writing]~~ shall be in writing and sufficiently detailed so that the parole agent can easily identify and locate ~~[find]~~ the evidence to be preserved.

R671-513-2. Review of Evidence.

Review of the parolee's evidence shall occur no later than ~~[5] five~~ days after the parolee has submitted ~~[it] a challenge to probable cause. If the reviewing Board member decides that the original probable cause determination was correct, the Board member shall deny the parolee's challenge, and parole violation proceedings will continue in accordance with applicable rules. If the reviewing Board member decides that the probable cause determination was incorrect, or that probable cause to believe a violation occurred no longer exists, the case shall be routed to the Board~~ ~~[a majority of the Board]~~ for deliberation. If a majority of the Board believes the parolee's evidence negates the finding of probable cause, the warrant shall be withdrawn and the parolee reinstated ~~[released back]~~ on parole. Time spent incarcerated pursuant to a warrant which is withdrawn constitutes ~~[counts toward]~~ service of the parolee's sentence and parole term.

KEY: parole, warrant, hearing

Date of Enactment or Last Substantive Amendment: [January 1, 1999] 2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-9(4); 77-27-11; 77-27-27; 77-27-28; 77-27-29; 77-27-30.

Pardons (Board of), Administration

R671-514

Waiver and Pleas of Guilt

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37460

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to articulate the policies and procedures through which waivers, guilty pleas, multiple pleas, and acceptance of pleas may be entered by a parolee and the procedures through which the Board handles each of these.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the policies and procedures through which waivers, guilty pleas, multiple pleas, and acceptance of pleas may be entered by a parolee and the procedures through which the Board handles such pleas.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Subsection 77-27-9(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on

this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.**R671-514. Waiver and Pleas of Guilt.****R671-514-1. Waiver and Pleas of Guilt.**

After executing ~~the~~ a Board warrant, the agent shall ~~teH~~ inform the parolee of the opportunity to plead guilty to any or all of the alleged parole violations ~~allegations against him~~ and that such a plea waives the right to a further ~~revocation and evidentiary~~ hearing on ~~that~~ any allegation admitted in the waiver.

R671-514-2. Guilty Pleas.

If ~~the~~ a parolee wishes to plead guilty, the agent shall provide the parolee with an ~~a copy of the~~ Affidavit of Waiver and Plea of Guilt form. If the parolee is functionally illiterate, or suffers from a mental disability, the agent shall explain the contents of the affidavit and waiver. If the agent believes the parolee is unable to understand the affidavit and waiver and appreciate the consequences of signing it for any other reason, the agent shall not execute the ~~W~~ waiver, ~~and~~ and ~~t~~ The agent shall promptly inform the Board, which may assign counsel to the parolee or take any other action that will assist the parolee ~~to~~ understand ~~his~~ the parolee's rights.

R671-514-3. Multiple Pleas.

A parolee may plead guilty to some of the allegations and plead not guilty to others. The Board may decide to dismiss the allegations to which the parolee pled not guilty and ~~make~~ enter a disposition based solely on the pleas of guilt. If the Board chooses to make a disposition based solely on pleas of guilt, it need not hold either an evidentiary or parole revocation hearing. However, at its discretion, the Board may schedule a ~~special appearance~~ hearing ~~or parole hearing, to ask~~ to interview the parolee ~~questions~~ or ~~listen~~ to ~~take~~ take victim testimony, if the Board determines that doing so would assist the Board in its decision.

R671-514-4. Entry of Pleas at Any [t]Time.

A parolee may enter a plea of guilt at any_time. If the parolee pleads guilty at [the]a revocation or evidentiary hearing, the hearing [officer]official shall explain to the parolee the rights [he is surrendering]being waived and shall receive an admission and plea on the record.~~[—Notwithstanding pleas of guilt, offenders are highly encouraged to attend their hearing.]~~

R671-514-5. Acceptance of Pleas.

If the parolee pleads guilty to all the allegations, the Board may accept the plea(s) and take any action it considers appropriate for disposition. The Board need not hold a parole revocation or evidentiary hearing. However, the Board may schedule a [special appearance] hearing[, or parole rehearing.] to interview[ask] the parolee [questions] or [listen to]take victim testimony if the Board determines that doing so would assist [it]the Board in [making an appropriate disposition]its decision.

KEY: parole, allegations, pleas

Date of Enactment or Last Substantive Amendment: [~~October 13, 2008~~]2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-9(4); 77-27-11

Pardons (Board of), Administration
R671-515
 Timeliness of Parole Revocation Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37461

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to detail the procedures and policies surrounding Parole Revocation Hearings and how parolees detained in other states as well as exceeded time periods are to be handled according to those policies.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the procedures and policies surrounding Parole Revocation Hearings and how parolees detained in other states as well as exceeded time periods are to be handled according to those policies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Subsection 77-27-9(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no

cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-515. Timeliness of Parole Revocation Hearings.

R671-515-1. Timeliness of Parole Revocation Hearings.

A Parole Revocation Hearing shall be conducted within 30 days after detention in a state prison, unless the parolee expressly waives the hearing in writing, or unless the Board finds good cause to continue the hearing.

R671-515-2. Detained in Another State.

If a parolee is detained in another state on a Utah Board warrant or on a new criminal offense, a parole revocation hearing should be conducted within ~~thirty (30)~~ 30 days ~~[from]after~~ the parolee's return to the State of Utah. ~~[When the only hold on a parolee is a Utah Board warrant, then the parolee must be returned as soon as is practical after affording the parolee all rights.]~~

R671-515-3. Exceed Time Period for Good Cause.

The Board may for good cause upon a motion by the parolee, ~~or~~ the Department of Corrections, or upon its own motion, exceed the time period[s] established ~~by this rule~~ ~~[in subsection (2)].~~ The time periods established by this ~~limitations in these~~ rule[s] are discretionary, not mandatory. A motion to dismiss a warrant or revocation proceeding based on failure to meet time limits will be granted only if the failure has substantially prejudiced the parolee's defense.

KEY: parole, timeliness, good cause

Date of Enactment or Last Substantive Amendment: ~~[October 13, 2008]~~ 2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: ~~[76-3-202]~~ 77-27-9(4); 77-27-11

Pardons (Board of), Administration
R671-516
 Parole Revocation Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37462

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to detail the policy and procedures that govern parole revocation hearing proceedings.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies policies and procedures which govern parole revocation hearing proceedings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Section 77-27-5 and Section 77-27-9

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.**R671-516. Parole Revocation Hearings.****R671-516-1. Allegations.**

At the hearing, the hearing ~~[officer]~~official shall: (a) inform the parolee of the parole violation allegations; ~~against him~~ (b) review the parolee's rights as to any guilty or no-contest pleas that may be entered; and (c) take ~~his~~the parolee's pleas on the record.

R671-516-2. ~~[All Guilty Pleas]~~Proceedings Upon Plea of Guilt or No-Contest.

If the parolee pleads guilty or no-contest to ~~[a]~~any of the allegations, the hearing ~~[officer]~~official may ~~[shall proceed directly]~~conduct further inquiry or proceedings in order to reach a ~~[to]~~ disposition and recommendation regarding the parole violation. The parolee ~~[shall]~~may present any reasons for mitigation. If present, the parole agent or representative of the Department of Corrections may discuss reasons for aggravation or mitigation and recommend a disposition. If not present, the parole agent or representative of the Department of Corrections may make such submissions and recommendations in writing. ~~[Notwithstanding the submission of guilty pleas, offenders are highly encouraged to attend their hearing.]~~

R671-516-3. Not Guilty Pleas.

If the parolee pleads not guilty to any allegation, the Board shall either schedule an evidentiary hearing on the allegation or dismiss it as soon as practical. See also Utah Admin. Code R671-514, Waiver and Pleas of Guilt.

R671-516-4. Insufficient Evidence.

If, upon receiving a plea of not guilty to a parole violation allegation, the hearing ~~[officer]~~official believes there is insufficient evidence to justify an evidentiary hearing, the matter shall be promptly routed to ~~[a]~~the Board. If a majority of the Board agrees, the allegation shall be dismissed. If all allegations are dismissed, the Board's warrant shall be vacated ~~withdrawn~~ and the parolee released from custody and reinstated on parole.

KEY: parole, revocation, hearings

Date of Enactment or Last Substantive Amendment: ~~[October 13, 2008]~~2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

Pardons (Board of), Administration R671-517 Evidentiary Hearings and Proceedings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37463

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to detail policies and procedures governing evidentiary hearings and proceedings.

SUMMARY OF THE RULE OR CHANGE: This amendment is intended to clarify of the language of the "Evidentiary Hearings and Proceedings" rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Section 77-27-5 and Section 77-27-9

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has

considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
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DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-517. Evidentiary Hearings and Proceedings.

R671-517-1. Evidentiary Hearings and Proceedings.

When a parolee has entered a not guilty plea to ~~[an]~~ a parole violation allegation ~~[that parole has been violated]~~ and the ~~[b]~~ Board wishes to consider the allegation, the Board shall hold an evidentiary hearing unless the parolee has been convicted of a criminal charge and revocation is ordered ~~[under]~~ pursuant to Utah R. Admin. P. R671-518], ~~Conduct of Proceedings when Criminal Charge Results in Conviction]~~.

R671-517-2. Confidentiality.

All hearings are open to the public, unless the Board decides that confidential information must be discussed. Only those portions of the hearing during which confidential information is discussed may be closed. ~~[Confidential hearings shall be conducted as set forth in]~~ See Utah R. Admin. R. R671-520.

R671-517-3. Notification.

The Board shall notify all parties of the time, date, and place of the hearing and of the disputed allegations ~~[(s)]~~. ~~[In this notification,~~ ¶] The parolee shall be notified of ~~[his or her]~~ the right to be represented by an attorney of choice at the parolee's own expense, or such counsel as may be provided by the Board. The ~~parolee~~ ~~[notification also]~~ shall also be informed ~~[the parolee]~~ of the right to confront and cross examine witnesses, ~~[(c)]~~ absent a showing of good cause for not allowing the confrontation~~[(c)]~~, and the right to present rebuttal evidence.

R671-517-4. Anticipated Witnesses, Documents and Other Evidence.

At least ten ~~[(10)]~~ days prior to the hearing, unless otherwise directed by the Board, each party shall provide to the ~~[other]~~ opposing party and to the Board a list of anticipated witnesses, documents, and other evidence to be submitted at the hearing, together with a summary of the relevance of each anticipated piece of evidence. Failure to comply with this rule may result in sanctions including, but not limited to, exclusion of the non-disclosed witnesses and evidence.

R671-517-5. ~~[Presided Over by a]~~ Single Hearing Official~~[Board Member]~~.

An evidentiary ~~[The]~~ hearing may be presided over by a single Board member or ~~[a]~~ hearing officer as the Board ~~[e]~~ Chair~~[person]~~ designates. The hearing official ~~[person presiding]~~ may, sua sponte, or upon motion of either party, exclude evidence that is irrelevant, unduly repetitious, or privileged~~[in the courts of Utah]~~. The hearing official ~~[person presiding]~~ may ~~[further]~~ take judicial notice of undisputed facts and may rule on motions ~~[offered]~~ made prior to or ~~[pending]~~ during the hearing.

R671-517-6. Department of Corrections Bears Burden of ~~[Evidence]~~ Proof.

The Department of Corrections bears the burden of establishing a parole violation by a preponderance of the evidence. All testimony shall be given under oath. ~~[Strict]~~ The Utah R~~[e]~~ Rules of ~~[e]~~ Evidence do not apply. Hearsay evidence is admissible and shall be given such weight as the ~~[person presiding]~~ hearing official considers appropriate; however, no finding of guilt shall be based solely on hearsay evidence, except where such evidence would be otherwise permitted in a court of law. ~~[The Fourth and Fifth Amendment]~~ ~~[e]~~ Exclusionary rules and case law do not apply to parole revocation hearings.

R671-517-7. Opening Statements.

At the hearing, each party may make a brief opening statement, beginning with the State. After opening statements, the State ~~[presents its evidence]~~ has the burden of presenting evidence of parole violation. Upon conclusion of the State's case, the parolee may present evidence in response. If the parolee, ~~[in his or her]~~ as a defense, raises issues not adequately addressed by the State's case in chief, the ~~[person presiding]~~ hearing official may allow the State to present rebuttal evidence in response~~[to that issue]~~. Upon conclusion of all evidence, the ~~[person presiding]~~ hearing official may allow each party to make a brief closing argument.

R671-517-8. Written Submissions.

Any brief or legal memorandum submitted to the ~~B]~~ board as part of an evidentiary hearing shall be ~~[delivered to the board]~~ filed at least ten ~~[(10)]~~ calendar days prior to the hearing, and shall include proof of service on the opposing party. The opposing party shall ~~may~~ furnish file any ~~[its]~~ written response ~~[to any such submissions]~~ no later than three ~~[(3)]~~ calendar days prior to the hearing. ~~[Such]~~ Written submissions shall be no longer than ten ~~[(10)]~~ double-spaced, typed pages, excluding exhibits. Either party may petition the hearing official for permission to exceed these length requirements or shorten these time requirements, and the decision whether to allow this shall rest in the sole discretion of the hearing official.

R671-517-9. Continuances.

1. All requests to continue a scheduled evidentiary hearing shall[-]; (a) be submitted to the board in writing, at least seven [(7)-] calendar days prior to the scheduled hearing[-]; and (b) [~~shall~~] contain either a stipulation of the parties, or a statement of why there is an extraordinary need for continuance and why such a continuance will not prejudice the interests of the other [side]party.

2. The decision to grant or deny a continuance rests in the sole discretion of the hearing official.

3. In the event a continuance is granted, each party shall be responsible for notifying its own witnesses.

KEY: parole, evidentiary, hearings

Date of Enactment or Last Substantive Amendment: [~~October 25, 2007~~2013

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

**Pardons (Board of), Administration
R671-519
Proceedings When Criminal Charges
Result in Acquittal**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37464

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to detail procedures for when proceedings regarding criminal charges result in acquittal and outlines policies governing evidence explanation and personal appearance.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the language of the rule and also clarifies what supplementary materials the parolee may provide.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Section 77-27-5 and Section 77-27-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that

there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.**R671-519. Proceedings When Criminal Charges Result in Acquittal.****R671-519-1. Proceedings When Criminal Charges Result in Acquittal.**

1. ~~If the basis for a parole revocation proceeding is a criminal charge of [in] which the parolee [was] is later acquitted, the parole agent or representative of the State may submit as its sole evidence the transcript from the criminal trial, which shall be disclosed to the parolee.~~

2. ~~The parolee may submit a response to the trial transcript submission or otherwise submit any information to supplement the record. [If the parolee believes submission on the transcript is insufficient, the parolee shall inform the Board of any objection and provide a rationale for the objection. Nevertheless, a trial at which the parolee was represented by counsel is presumed sufficient for the hearing official to determine by a preponderance of the evidence whether parole was violated.]~~

R671-519-2. Evidence Explanation.

~~[Both parties]~~ Any party may file memoranda explaining ~~whether [how]~~ the evidence provided at the trial ~~[either did, or did not, provide] was sufficient [evidence]~~, under a preponderance standard, for finding a parole violation. Such memoranda shall not exceed ten ~~[-(10)]~~, double-spaced, typed pages in length (excluding exhibits), except in cases where the ~~[b]~~ Board has granted leave to exceed this limit.

R671-519-3. Personal Appearance.

A personal appearance hearing is not required ~~[under this rule]~~ for purposes of arguing the evidence. However, if, after reviewing the transcripts and memoranda, the hearing official concludes that parole has been violated, a personal appearance hearing may be held for purposes of determining disposition and ~~hearing [listening to any] victim testimony [comments].~~

KEY: parole, acquit, hearings

Date of Enactment or Last Substantive Amendment: ~~[October 25, 2007] 2013~~

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

Pardons (Board of), Administration

R671-520

Treatment of Confidential Testimony

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37465

FILED: 03/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to detail procedures

and policies with regard to how confidential testimony is treated in parole hearings.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedure and policy regarding the treatment of confidential testimony in hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11 and Section 77-27-5 and Section 77-27-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to state government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **LOCAL GOVERNMENTS:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **SMALL BUSINESSES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 03/04/2013 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PARDONS (BOARD OF)
 ADMINISTRATION

ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

Public Service Commission,
Administration
R746-343-15
Surcharge

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-520. Treatment of Confidential Testimony.

R671-520-1. Treatment of Confidential Testimony.

1. Confidential testimony shall be admitted at an evidentiary hearing on an alleged parole violation ~~under the following three-part procedure:~~

[+]2. The State shall make a specific, written preliminary showing of good cause for the testimony to be received in camera.

[2]3. Upon a finding of ~~just~~ good cause for confidentiality, the Board shall conduct an in[-]camera inspection of the witness, the proffered testimony, and any supporting testimony to determine:

- a. the credibility and veracity of the witness;
- b. the overall reliability of the testimony itself; and
- c. whether keeping the information confidential will substantially impair the parolee's due process rights to notice of the evidence or to confront and cross-examine adverse witnesses.

4. If the Board is satisfied with the ~~se~~ three aspects in Subsection (3), it shall receive the testimony and give it whatever weight it considers appropriate. An electronic record shall be made of this in[-]camera proceeding.

[3]5. A summary of the testimony taken in[-]camera shall be prepared for disclosure to the parolee, informing the parolee of the general nature of the testimony received in[-]camera but without defeating the good cause found by the Board for treating the information confidentially. This summary shall be presented on the record at the public evidentiary hearing and the parolee shall be given an opportunity to respond.

KEY: parole, confidential testimony, hearings

Date of Enactment or Last Substantive Amendment: ~~[October 10, 2007]~~ **2013**

Notice of Continuation: February 15, 2013

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37449

FILED: 03/28/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 54-8b-10 requires the Commission to impose a Hearing and Speech Impaired Surcharge on local exchange and mobile telephone service. The surcharge is used to provide telecommunications devices to hearing or speech impaired customers. The statutory maximum surcharge is \$0.20. The Hearing and Speech Impaired Fund, into which the surcharges are deposited, is increasing because surcharge revenues are exceeding expenses. In March 2013, the Division of Public Utilities completed an analysis of the fund and recommended a decrease in the surcharge.

SUMMARY OF THE RULE OR CHANGE: This rule change lowers the Hearing and Speech Impaired Surcharge by one-sixth, from \$0.06 to \$0.05. To accommodate billing cycles of telecommunications companies, the Public Service Commission anticipates making this rule change effective on 07/01/2013.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-10

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule change should decrease or eliminate the growth of the Hearing and Speech Impaired Fund. The change should not impact the ability of the Commission to use the fund to provide telecommunications devices to hearing or speech impaired customers. Additionally, this rule change should provide a small cost savings of \$0.01 per month per account to state government entities who purchase local exchange or mobile telephone service.

♦ **LOCAL GOVERNMENTS:** This rule change should provide a small cost savings of \$0.01 per month per account to local governments who purchase local exchange or mobile telephone service.

♦ **SMALL BUSINESSES:** This rule change should provide a small cost savings of \$0.01 per month per account to local governments who purchase local exchange or mobile telephone service.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule change should provide a small cost savings of \$0.01 per month per account to any person or business who purchases local exchange or mobile telephone service.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. The telephone service providers who are currently collecting a \$0.06 surcharge will continue to collect the lower surcharge of \$0.05. The change should not create any compliance cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects sound fiscal management of the Hearing and Speech Impaired Fund, with a goal of maintaining collections into the fund close to anticipated expenses. Utah customers of local exchange or mobile telephone service will experience a cost savings of \$0.01 per month per account.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.
R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.
R746-343-15. Surcharge.

A. The surcharge will be imposed on each telephone number of each residential and business customer in this state.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is [~~\$0.06~~]\$0.05 per month for each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).

C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each telecommunications

corporation providing public telecommunications service to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

KEY: public assistance, physically handicapped, rates, telecommunications

Date of Enactment or Last Substantive Amendment: [~~June 20, 2012~~]2013

Notice of Continuation: December 10, 2012

Authorizing, and Implemented or Interpreted Law: 54-8b-10

**Public Service Commission,
Administration
R746-405
Filing of Tariffs for Gas, Electric,
Telephone, and Water Utilities**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37447

FILED: 03/27/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is intended to provide more clarity and transparency to the process for all tariff filings. The proposed changes already exist in statute (Utah Code Section 54-7-12.8) for demand side management tariff filings, and this change will apply those processes to all tariffs.

SUMMARY OF THE RULE OR CHANGE: The changes: require a tariff filing with the Public Service Commission to be furnished to the Division of Public Utilities and the Office of Consumer Services; and require any party recommending that the Commission reject, suspend, alter, or modify a tariff to request that action within 15 calendar days after the tariff is filed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-2 and Section 54-3-3 and Section 54-3-4 and Section 54-4-1 and Section 54-4-4 and Section 54-7-12 and Section 54-7-12.8

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This filing codifies practices that generally exist for tariff filings, and should not impact the operations of any state agencies. To the extent that this filing clarifies existing procedures, an unquantifiable cost savings might result.

◆ **LOCAL GOVERNMENTS:** This filing codifies practices that generally exist for tariff filings, and should not impact the operations of local government. To the extent that this filing clarifies existing procedures, an unquantifiable cost savings might result.

◆ **SMALL BUSINESSES:** This filing codifies practices that generally exist for tariff filings, and should not impact the operations of any small business, business, or local governmental entity. To the extent that this filing clarifies existing procedures, an unquantifiable cost savings might result.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This filing codifies practices that generally exist for tariff filings, and should not impact the operations of any small business, business, or local governmental entity. To the extent that this filing clarifies existing procedures, an unquantifiable cost savings might result.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This filing codifies practices that generally exist for tariff filings, and should not impact the operations of any affected person. To the extent that this filing clarifies existing procedures, an unquantifiable cost savings might result.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing provides additional clarification and transparency to the existing tariff process. No fiscal impact should result other than a potential unquantifiable cost savings as a result of the additional clarity this rule change provides.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.**R746-405. Filing of Tariffs for Gas, Electric, Telephone, and Water Utilities.****R746-405-2. Format and Construction of Tariffs.**

A. Format--Tariffs shall be in loose-leaf form for binding in a stiff-backed book or books as required and consist of parts or subdivisions arranged in order set forth as follows:

1. Title:
"TARIFF"
Applicable to
Kind of
SERVICE
NAME OF UTILITY

2. Table of Contents: a complete index of numbers and titles of effective sheets listed in the order in which the tariff sheets are arranged in the tariff book. Table of contents sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C).

3. Preliminary statement: a brief description of the territory served, types and classes or service rendered and general conditions under which the service is rendered. Preliminary sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C). The preliminary statement shall clearly define the symbols used in the tariffs. For example:

a. "C" to signify changed listing, rule or condition which may affect rates or charges;
b. "D" to signify discontinued material, including listing, rate, rule or condition;
c. "I" to signify increase;
d. "L" to signify material relocated from or to another part of the tariff schedules with no change in text, rate, rule or condition;
e. "N" to signify new material including listing, rate, rule or condition;
f. "R" to signify reduction;
g. "T" to signify change in wording of text but no change in rate, rule or condition.

4. Service area maps: maps for telecommunication utilities shall clearly indicate the boundaries of the service area, the principal streets, other main identifying features therein, the general location of the service area in relation to nearby cities, major highways or other well-known reference points and the relation between service area boundaries and map references. Service area maps shall be approximately 8-1/2 x 11 inches in size, or folded to that size in order to fit within the borders of the space provided on tariff sheets. Maps for gas, water and electric utilities shall clearly indicate the boundaries of the service area.

B. Tariff Books--

1. Utilities shall constantly maintain their presently effective tariff at each business office open to the public.

2. Utilities shall remove canceled tariff sheets from their currently effective tariffs. Utilities shall permanently retain a file of canceled tariff sheets.

C. Construction of Tariffs for Filing--

1. The loose-leaf sheets used in tariffs shall be of paper stock not less than 16 lb. bond or of equal durability and 8-1/2 x 11 inches in size. Tariffs may be printed, typewritten or mimeographed or

other similar process. Tariffs may not be hand-written. One side of a sheet only may be used and a binding margin of at least 1-1/8 inches at the left of the sheet.

a. The tariff sheets of each utility shall provide the following information:

- i. the name of the utility;
- ii. the sheet, or page number, along with information to designate whether it is the first version of the sheet or whether the sheet has been revised since it was originally issued. Sheets shall be numbered consecutively;
- iii. the number of the advice letter with which the sheet is submitted to the Commission or the docket number if the sheet is filed in accordance with a report and order of the Commission;
- iv. information to indicate the date the sheet was filed with the Commission and the date the sheet became effective.

2. Tariffs shall include the following information and as nearly as possible in the following order:

- a. schedule number or other designation;
- b. class of service, such as business or residential;
- c. character of applicability, such as heating, lighting or power, or individual and party-line service;
- d. territory to which the tariff applies;
- e. rates, in tabular form if practicable;
- f. special conditions, limitations, qualifications and restrictions. The conditions shall be brief and clearly worded to cover all special conditions of the rate. Amounts subject to refund shall be specified.

3. If a rate schedule or a rule is carried forward from one sheet to another, the word "Continued" shall be shown.

D. Submission of Tariff Sheets and Advice Letters--

1. Tariff sheets shall be transmitted by an advice letter or in response to a Commission order. A revised table of contents sheet shall be transmitted with each proposed tariff change, if the change requires alteration of the table of contents.

2. An original of each advice letter and tariff sheet shall be filed with the commission, along with the number of paper copies specified at <http://www.psc.utah.gov/filingrequirements.html>. In addition, each advice letter and tariff filing shall be presented as an electronic word processing or spreadsheet document that is substantially the same as the filed paper copy.

3. Advice letters shall include the following:

- a. sheet numbers and titles of the tariff sheets being filed, together with the sheet numbers of the sheets being canceled;
- b. essential information as to the reasons for the filing;
- c. dates on which the tariff sheets are proposed to become effective;
- d. increases or decreases, more or less restrictive conditions, or withdrawals;
- e. in the case of an increase authorized by the Commission, reference to the report and order authorizing the increase and docket number;
- f. if the filing covers a new service not previously offered or rendered, an explanation of the general effect of the filing, including a statement as to whether present rates or charges will be affected, or service withdrawn from a previous user and advice whether the proposed rates are cost-based;
- g. a statement that the tariff sheets proposed do not constitute a violation of state law or Commission rule. The filing of proposed tariff sheets shall of itself constitute the representation of the

filing utility that it, in good faith, believes the proposed sheets or revised sheets to be consistent with applicable statutes, rules and orders. The Commission may, after hearing, impose sanctions for a violation hereof.

4. If authorized to file a notice that the effective tariff of a previous owner for the same service area is being adopted, the notice of adoption shall be submitted in the form of an advice letter.

5. Advice letters shall be numbered annually and chronologically. The first two digits represent the year followed by a hyphen and two or more digits, beginning with 01, as submitted by a utility for class of utility service rendered.

6. If a change is proposed on a tariff sheet, attention shall be directed to the change by an appropriate character along the right-hand margin of the tariff sheet using the symbols set forth in the preliminary statement.

7. At the time of making a tariff filing with the Commission, the utility shall furnish a copy of the advice letter and a copy of each related tariff sheet to:

- a. the Division;
- b. the Office; and
- c. interested parties having requested notification.

8. If the suspension is lifted by order of the Commission, the filing shall be resubmitted under a new advice letter number. If the suspension is made permanent by the Commission, the advice letter number shall not be used again.

E. Approval of Filed Tariff Sheets--

1. Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified. This requirement does not apply to electrical or telephone cooperatives in compliance with Section 54-7-12(6), or by telecommunications utilities with less than 5,000 subscribers access lines in compliance with Section 54-7-12(7).

2. New tariff sheets covering a service or commodity not previously furnished or supplied, or revised tariff sheets, not increasing, or increasing pursuant to Commission order, a rate, toll, rental or charge, may be filed by the advice letter. Tariff sheets, unless otherwise authorized by the Commission either on complaint or on its own motion, shall become effective after not less than 30 calendar days after the filed date.

3. Upon application in the advice letter and for good cause shown, the Commission may authorize tariff sheets to become effective on a day before the end of the 30 day notice period.

4. a. The Commission may reject, ~~or~~ suspend, alter, or modify the effectiveness of tariff sheets that do not conform to these rules, which have alterations on the face thereof or contain errors, or for other reasons as the Commission determines.

b. Any party recommending that the Commission reject, suspend, alter, or modify the effectiveness of tariff sheets shall file its request no later than 15 calendar days after the date the tariff sheets were filed with the Commission.

c. The Commission shall notify the utility[;] of its action by a letter stating the reasons ~~therefore~~ for the action.

d. Rejected tariff sheets shall be retained in the utility's file of canceled and superseded sheets.

e. Advice letter numbers of rejected filings shall not be reused.

F. Public Inspection of Tariffs--

1. Utilities shall maintain, open for public inspection at their main office, a copy of the complete tariff and advice letters filed with the Commission. Utilities shall maintain, open for public inspection, copies of their effective tariffs applicable within the territories served by the offices.

2. Utilities shall post in a conspicuous place in their major manned business office, a notice to the effect that copies of the schedule of applicable rates in the territory are on file and may be inspected by anyone desiring to do so.

G. Contracts Authorized by Tariff--Tariff sheets expressly providing that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the contract need not be filed with the Commission. A copy of the general form of contract to be used in each case shall be filed with the tariff as provided in these rules.

This contract shall be subject to changes or modifications by the Commission.

KEY: rules and procedures, public utilities, tariffs, utility regulations

Date of Enactment or Last Substantive Amendment: ~~July 9, 2012~~ 2013

Notice of Continuation: March 28, 2013

Authorizing, and Implemented or Interpreted Law: 54-3-2; 54-3-3; 54-3-4; 54-4-1; 54-4-4; 54-7-12

**Regents (Board of), University of Utah,
Administration
R805-1
Operating Regulations for Bicycles,
Skateboards and Scooters**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 37446
FILED: 03/27/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to provide greater clarity regarding the rules for operating non-pedestrian devices on the University of Utah campus. It is also being amended to provide the University with more effective tools to enforce, and obtain compliance with, the policy including greater sanctions and the ability to impound devices in appropriate circumstances.

SUMMARY OF THE RULE OR CHANGE: The changes to the rules clarify that non-pedestrian devices (e.g., bicycles, skateboards, rollerskates, scooters) are only allowed on the University of Utah campus for the purpose of commuting to and from the University, and across the University, for University-related activities. Recreational use of these

devices is prohibited on campus. The changes to the rules amend existing provisions to provide greater clarity to those provisions. Finally, the changes to the rule add greater sanctions for violations of the rule and also provide the University with the ability to impound devices that are operated on campus in violation of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-2-106 and Section 53B-3-101 and Section 76-8-701 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The university does not anticipate any financial impact to the state budget associated with amending this rule.

◆ **LOCAL GOVERNMENTS:** The university anticipates no costs or savings to local government as a result of the rule because the rule does not apply to local governments and local governments will have no obligations for implementation of the rule.

◆ **SMALL BUSINESSES:** The university anticipates no costs or savings to small businesses as a result of the rule. The rule governs the conduct of individuals, not businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The only persons who will be affected by the rule are those individuals who violate the rule and who may receive sanctions as a result of their actions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons who violate the rule may be subject to sanctions as outlined in Subsection R805-1-3(B) of the amended rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule applies to individuals who engage in activities and conduct on the university's property. The rule does not apply to business entities. Therefore, the rule should have no fiscal impact on businesses.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH, ADMINISTRATION
ROOM 309 PARK BLDG
201 S PRESIDENTS CIR
SALT LAKE CITY, UT 84112-9009
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Robert Payne by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at robert.payne@legal.utah.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2013

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2013

AUTHORIZED BY: Robert Payne, Associate General Counsel

R805. Regents (Board of), University of Utah, Administration.
R805-1. Operating Regulations for Bicycles, Skateboards, Rollerskates, and Scooters (Non-Motorized Riding Devices).
R805-1-1. Purpose.

~~To set forth the regulations that govern the operation and use of bicycles, skateboards and scooters on the campus of, or on other property owned, operated or controlled by, the University of Utah. [A. The purpose of this Policy is to govern the operation and use of non-motorized riding devices, including bicycles, skateboards, rollerskates and scooters, on the campus of, or on other premises owned, operated or controlled by, the University of Utah.~~

B. This Policy governs the use of non-motorized riding devices by members of the public who visit the University of Utah campus. It is not intended to govern use by current University students, employees or other persons who are formally affiliated with the University.

R805-1-2. Definitions.

A. "Bicycle": ~~[every]~~means a device propelled by human power upon which ~~[any]~~a person may ride having two tandem wheels either of which is more than 12 inches in diameter, ~~[and]~~ It also includes any device generally recognized as a bicycle, although equipped with more than one front or rear wheel (e.g., a tricycle).

B. "Skateboard": ~~[every]~~means a non-motorized device consisting of two or more wheels affixed to a platform or footboard upon which a rider stands and which does not have steering capability similar to that of a bicycle ~~[and does not have]~~or brakes which operate on or upon the wheels of the skateboard. It also includes every device generally recognized as a skateboard.

C. "Scooter": ~~[every]~~means a non-motorized device consisting of two or more wheels affixed to a platform or footboard upon which a rider stands and which has a handle or other mechanism ~~[at the front]~~for holding or guiding the device. It also includes every device generally recognized as a scooter.~~[It does not include such devices if they have steering capability similar to a bicycle and also have brakes that operate on or upon the wheels of the device.]~~ It does not include mopeds, whether operated with or without motor power. For the purpose of these regulations mopeds and motorcycles are considered motor vehicles, and are not within the scope of this regulation.

D. "Rollerskates" means a device consisting of a shoe with a set of wheels attached for skating or a metal frame with wheels attached that can be fitted to the sole of a shoe worn by a person. It includes in-line skates, rollerblades and every device generally recognized as rollerskates.

E. "University premises" means the University campus and any other real property or structure located on real property owned, operated or controlled by the University of Utah.

F. "Non-motorized riding device" means any non-motorized device designed or used for riding by one or more persons including any bicycle, skateboard, scooters, or rollerskates, as defined above. "Non-motorized riding device" does not include a wheelchair or similar device when being used for transportation by any person with disabilities or a baby stroller or similar device when being used for transporting any child.

G. "University-related activities" are those activities occurring on University premises where members of the public are invited by the University and welcome to participate. They include but are not limited to presenting at or attending lectures, panel discussions, sporting events, cultural exhibits, or similar presentations; studying or conducting research at the University's libraries or facilities open to the public for such activities; participating in free speech activities; and using designated recreation facilities open to the public.

H. "Visitors" means members of the public who visit University Premises and are not University students, employees or other persons who are formally affiliated with the University.

R805-1-3. Policy.

A. ~~[Bicycles]~~Permissible and Impermissible Uses of Non-Motorized Riding Devices.

1. Visitors may ride non-motorized riding devices on University premises for the limited purposes of commuting to or from the University, or commuting between University locations, for the purpose of participating in University-related activities. Except as specifically described immediately below, any recreational, athletic, or other use of a non-motorized riding device on University premises unrelated to participation in University-related activities is strictly prohibited. This recreational use prohibition shall not apply to officially designated sections of the Bonneville Shoreline Trail which traverse the east end of the University campus.

2. In areas where designated bicycle paths are provided, bicycles may only be ridden in such designated bicycle paths. Where bicycle paths are not available for reaching a particular location, bicycles may be ridden upon roadways and pedestrian sidewalks to reach such areas. However, the University may identify and by appropriate signage designate some locations in which bicycle riding is prohibited either permanently or during certain time periods (e.g., restricting bicycle riding on certain highly congested pedestrian walkways during designated periods). Bicycle riders shall comply with all official traffic control devices and signs including posted signs prohibiting riding in a particular designated location. Bicyclists may dismount and walk their bicycles across any pedestrian accessible area in which bicycling riding is prohibited.

3. Skateboards, scooters and rollerskates (or other non-motorized riding devices other than bicycles) may only be ridden upon designated bicycle paths and pedestrian pathways. Riding such devices on roadways or in parking lots is strictly prohibited at all times--because the University has determined that such uses would present unacceptable risks of injury to riders and other users, and unacceptable impeding of motor vehicle traffic in such areas. Also, the University may identify and by appropriate signage designate certain areas in which riding of any particular type of non-motorized device is prohibited (e.g., it may designate certain pedestrian pathways as off-limits for skateboard riding because risks of personal injury are heightened due to steep grades or congestion). Persons riding such non-motorized riding devices shall comply with all official traffic control devices and signs including posted signs prohibiting riding in a particular designated location. Device users may dismount and carry their devices across any pedestrian accessible area in which riding of such devices is prohibited.

4. Non-motorized riding devices, of any type, shall not be ridden upon any stairway, wall, bench, fountain, or other structure or facility, or on or over landscaping, shrubbery, grass or flower beds.

Such devices shall not be ridden within any building or parking structure.

5. Every person riding a non-motorized riding device in any pedestrian accessible area shall yield the right of way to pedestrians at all times.

6. Every person ~~operating a bicycle~~ riding a non-motorized riding device shall exercise due care and reasonable caution to prevent injury to others, to ~~him~~self, or to property.

~~2. Every person operating a bicycle shall yield the right of way to pedestrians at all times.~~

~~3~~7. No person ~~operating a bicycle~~ riding a non-motorized riding device shall exceed a reasonable and proper speed under the circumstances then and there existing ~~and in no event~~ ~~(including the limited braking or steering capabilities of the device)~~. In no instance shall any person operate a ~~bicycle~~non-motorized riding device at a speed greater than 10 miles per hour upon any bicycle path, sidewalk or other pedestrian pathway~~except as part of a university approved competition or function~~.

~~4. Bicycles shall not be ridden upon any stairway, wall, bench, or other structure or facility or on or over shrubbery or flower beds. Bicycles shall not be ridden within any building.~~

~~5. Unless otherwise provided by regulations or traffic signs, bicycles may only be ridden upon roadways and sidewalks, except that where a bicycle path has been provided adjacent to a roadway or sidewalk, bicycle operators shall use such bicycle path.~~

~~6. No person riding a bicycle shall attach the same in any manner to any moving vehicle, except that this shall not prohibit the attaching to a bicycle of a bicycle trailer or semitrailer specifically designed for such attachment.~~

~~7~~8. ~~Bicycles~~Non-motorized riding device shall not be ridden two or more abreast on any bicycle path, sidewalk or pedestrian walkway~~except as part of a university approved competition or function~~.

~~8. No person shall ride a bicycle upon or along a sidewalk, pedestrian walkway, or across a roadway where the riding of bicycles is prohibited by official traffic control devices or signs, except as part of a university approved competition or function.~~

9. No ~~bicycle~~non-motorized riding device shall be used to carry more persons at one time than the number for which it is designed and equipped, except that an adult bicycle rider may carry a child securely attached to his/her person in a backpack or sling or in a child carrier securely attached to the bicycle.

10. No ~~person riding a~~bicycle rider shall carry any package, bundle, or other article which ~~prevents~~may prevent the ~~operator~~rider from ~~using~~keeping at least one hand on the handle bars.

11. No person riding a non-motorized riding device shall attach the same in any manner to any moving motor vehicle, except that this shall not prohibit the attaching to a bicycle of a bicycle trailer or semitrailer specifically designed for such attachment.

~~11~~12. Every bicycle ridden on University premises shall be equipped with such brakes, reflectors and other safety devices ~~at such times~~as ~~is~~required by ~~State~~Utah state law for operating a bicycle on streets or highways.

~~12~~13. ~~Bicycles~~No non-motorized riding devices shall ~~not~~be left unattended or parked on or at ~~handicap~~ramps, ~~handicap~~entrances or other facilities designated for ~~handicapped traffic~~persons with physical disabilities or in such a manner as to impede the free and clear use of such facilities.

~~13~~14. ~~Bicycles~~No non-motorized riding devices shall ~~not~~be left unattended or parked in the public areas of any building, including but not limited to hallways, stairwells, and classrooms. ~~Bicycles~~Such devices shall not be left unattended or parked at or near any building entrance or exit in such ~~a~~manner as to impede the free and clear use of such areas.

~~14~~15. ~~Bicycles~~No non-motorized devices shall ~~not~~be parked at or attached to any fire hydrant, standpipe, building service equipment or other safety device.

~~15. State traffic laws pertaining to bicycles are in full force and effect on the campus of, or on other property owned, operated or controlled by, the University of Utah.~~

~~B. Skateboards and Scooters~~

~~1. Every person riding a skateboard or scooter shall exercise due care and reasonable caution to prevent injury to others, to himself, or to property.~~

~~2. Every person riding a skateboard or scooter shall yield the right of way to pedestrians at all times.~~

~~3. No person riding a skateboard or scooter shall exceed a reasonable and proper speed under the circumstances then and there existing and in no event shall any person riding a skateboard or scooter exceed a speed of 10 miles per hour upon any sidewalk or pedestrian pathway except as part of a university approved competition or function.~~

~~4. Skateboards and scooters shall not be ridden upon any stairway, wall, bench, or other structure or facility or on or over any landscaped area, including, but not limited to, grass areas, shrubbery, or flower beds. Skateboards and scooters shall not be ridden within any building.~~

~~5. Unless otherwise provided by regulations or traffic signs, skateboards and scooters may only be ridden upon pedestrian sidewalks. Skateboards and scooters shall not be ridden upon any sidewalk where there is a posted sign prohibiting such activity. Except as part of a university approved competition or function, skateboards and scooters shall not be ridden upon any parking lot.~~

~~6. Skateboard and scooter riders shall not engage in obstacle riding or other acts or maneuvers which endanger the rider or others.~~

~~7. The appropriate bodies may adopt policies concerning the riding of skateboards and scooters in university student apartment areas.~~

~~8. Operators of those devices which are excluded from the skateboard or scooter category in these regulations because they have steering capability similar to a bicycle and because they have brakes which operate on or upon the wheels of the device shall comply with the regulations herein for bicycles.~~

~~9. Any state laws pertaining to skateboards and scooters are in full force and effect on the campus of, or on other property owned, operated or controlled by, the University of Utah.~~

~~C. Sanctions~~

~~1. These regulations may be enforced against university students, university staff and university faculty by violation notices which may be processed and settled through the parking citation and appeals procedures and offices.~~

~~2. Payment of violation notice fees shall be within seven working days. After that additional fees or penalties may be invoked. It is the responsibility of the recipient of the violation notices to promptly settle them.~~

~~3. Unsettled violation notice fees may be withheld from the paychecks of faculty and staff.~~

4. Registration holds may be placed against delinquent student violators; student registration may be canceled in any instance where a student circumvents the system and registers without clearing delinquent violation notices; transcripts of credits may be withheld for students leaving the university with delinquent violation notices.

5. Chronic or flagrant student violators may be referred to the Student Behavior Committee for appropriate disciplinary action.

6. Alternative violation notices may be issued to persons not affiliated as student, staff or faculty with the university and will be handled the same as alternative parking violation notices.

7. Violation notices for violations of these regulations may be appealed to the Parking Appeals Office under the same rules, including time limitations, as parking violation notices.

8. Adverse ruling of the Parking Appeals Officer may be appealed to the Campus Parking Citation Appeals Committee under the same rules, including time limitations, as parking violation notices.

9. Bicycles, scooters or skateboards parked or placed in prohibited areas may be impounded, or otherwise secured. Bicycles, scooters or skateboards parked or placed in areas where they constitute a hazard to others may be removed and impounded.

10. In appropriate cases, including but not limited to chronic or flagrant violations of these regulations, university affiliated persons or non-university affiliated persons may be prohibited from bringing onto the campus bicycles, scooters or skateboards.

11. In appropriate cases, including but not limited to chronic or flagrant violations of these regulations, nonuniversity affiliated persons may be prohibited entry upon the campus.

B. Sanctions for impermissible Uses

1. Any visitor who violates sections III(A)(1) through III(A)(10), above may be subject to the following sanctions:

a. For a first offense, the University will record the individual's name and provide a written warning against further non-motorized riding device use in violation of this Policy. If, at the time of violation, an individual does not produce satisfactory identification, his/her non-motorized riding device will be impounded. The non-motorized riding device will be released when the individual presents appropriate proof of the individual's identification to the University's Department of Public Safety. There is no impoundment fee (or any fine) for the first offense. (However, note that per section B-4 below, any violation which results in serious injury to another person or major damage to property could result in criminal prosecution or civil liability under applicable Utah state law. In such serious cases, a Public Safety officer may take the device into custody as evidence).

b. For a second offense which takes place within twenty-four months of an individual's first offense or warning, the non-motorized riding device will be impounded for not less than forty-eight hours and the individual shall be required to pay a fine of not less than \$100 dollars plus the applicable impoundment fee.

c. For offenses after an individual's second offense, which are within twenty-four months of the individual's immediately preceding offense, the non-motorized riding device will be impounded for not less than thirty calendar days and the offender shall be subject to an escalating schedule of fines for each offense beyond the second offense, plus the applicable impoundment fee.

d. In appropriate cases, including but not limited to chronic or flagrant violations of this Policy, visitors may be prohibited from riding or using non-motorized devices on University premises, permanently or for a designated period.

e. In appropriate cases, including but not limited to chronic or flagrant violations of this Policy, visitors may be subject to eviction or denial of access to University premises.

2. Any visitor who violates sections III(A)(1) through III(A)(14), above may be subject to the following sanctions:

a. Receipt of a violation notice which will be processed and settled through the office of Commuter Services. Violation notice fees shall be paid within seven working days of receipt of the notice. After the seven day period, additional fees or penalties will be invoked. It is the responsibility of the recipient of a violation notice to promptly settle it.

b. Non-motorized devices parked or placed in prohibited areas will be impounded, or otherwise secured by the Department of Public Safety. Non-motorized devices parked or placed in areas where they may constitute a hazard to others will be removed and impounded.

3. The sanctions set forth under section III(B)(2) will not be applied in in an instance in which an individual receives sanctions under section III(B)(1) for the same offense.

4. All Utah state laws pertaining to non-motorized riding devices are in full force and effect on University premises. In particular, improper usage of such devices resulting in injury to other persons or property damage may subject the user to criminal prosecution or civil liability under applicable state law, in addition to any sanctions provided for under this Policy.

C. Impoundment

Impounded non-motorized riding devices will be held by the University's Department of Public Safety or office of Commuter Services and released only during regular business hours to individuals with satisfactory identification. Payment of an impoundment fee (not to exceed \$25) will also be required for release, except as provided in (III)(B)(1)(a) above.

Devices impounded under this section will be held for a maximum of sixty days following the applicable impoundment period. Devices not retrieved during this period are presumed to have been abandoned and will be subject to disposal by University Surplus and Salvage. The device owner who has abandoned his/her device shall not be entitled to repurchase the device at University Surplus and Salvage.

The University and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impounding, storage, or sale of any item under this section.

Impoundment or sale of any non-motorized riding device under this section shall neither substitute for, nor release any person from, liability for damage to persons or property caused by use of a non-motorized device on University premises (under applicable Utah law per Part III-E); nor does it remove the obligation for any fines or fees associated with the violation or other outstanding citations. Any proceeds resulting from the sale of a non-motorized riding device will be credited toward the outstanding fee associated with the impoundment of that device.

D. Appeals

1. Impoundments and fines or fees assessed pursuant to Section III(B)(1) above may be appealed to the Office of the Vice President for Administrative Services. The decision of the Vice President for Administrative Services, or his designee, shall be final.

2. Violation notices provided pursuant to Section III(B)(2) above may be appealed to the University's office of Commuter Services under the same rules, including time limitations, as parking

violation notices. See Policy 5-206 Vehicle Parking Policy. An adverse ruling of an Appeals Officer may be appealed to the Parking Appeals Committee under the same rules, including time limitations, as parking violation notices. The decision of the Parking Appeals Committee shall be final.

KEY: bicycles, pedestrian, safety, speed limits

Date of Enactment or Last Substantive Amendment: ~~1989~~2013

Notice of Continuation: March 12, 2013

Authorizing, and Implemented or Interpreted Law: 53B-2-106; 53B-3-101; 76-8-701 et seq.

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

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

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

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

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

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

Agriculture and Food, Horse Racing Commission (Utah)

R52-7

Horse Racing

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 37420

FILED: 03/20/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule filing is to make practical the medication rules concerning horse racing in the State of Utah so that test of drug levels can be fairly and accurately measured and detected. Specifically, making the medication limits comparable to those of states where Utah race horses regularly compete.

SUMMARY OF THE RULE OR CHANGE: This rule adopts the drug threshold levels used by the California Horse Racing Board, making clear the authorized drugs that can be used and the allowable levels those drugs can be found in the horse's body. The exact rules that will be incorporated by reference are: California Horse Racing Board Rule (CHRB) No. 1844 (Effective 02/14/12), Authorized Medication, with sections (h)(2),(e)(9) and (f) exempted; and (CHRB) Rule No. 1845 (Effective 5/27/05), Authorized Bleeder Medication, sections (b) - (c) and (e). This emergency rule also adopts a new standard for clenbuterol that is not incorporated by reference.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-38-4(1)(e)

EMERGENCY RULE REASON AND JUSTIFICATION:

REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

JUSTIFICATION: This new emergency rule establishes drug threshold levels which are widely accepted in the horse racing industry. With the advances in drug testing and medication procedures in the horse racing industry, the need to update the current rule has arisen. An example of this is in urine analysis. A horse that was given a drug for training or medicinal purposes weeks prior to testing, still may produce metabolites of that drug in extremely small, nevertheless detectable amounts (due to the current sophistication of laboratory testing). Despite the fact that the physiological effects of that drug, as a potential performance enhancing compound, would have vanished in the weeks prior to testing, under current rule that horse would test positive for that drug if any trace is detected, thus resulting in a violation of the "zero tolerance" rule. By implementing scientifically sound threshold levels that protect horse racing from cheating via performance enhancing drugs, but at the same time allow for acceptable use of some drugs for medical and training purposes the horse racing industry is better served.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds California Horse Racing Board Rule, published by California Horse Racing Board, 01/14/2012

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No cost will be incurred to the state by implementation of this rule because the cost of blood test(s) is the responsibility of the horse owners and/or trainers.
- ◆ LOCAL GOVERNMENTS: No cost will be incurred to local government for implementation of this rule because the cost of blood test(s) is the responsibility of the horse owners and/or trainers.
- ◆ SMALL BUSINESSES: No cost will be incurred by the small business community by implementation of this rule because the cost of blood test(s) is the responsibility of the horse owners and/or trainer.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The implementation of this rule would require a larger drug assay test to be performed compared to what the current rule calls for. As a result, the cost of performing this test will increase by approximately \$20 per test, affecting the trainers and owners who are responsible for paying for the tests.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The implementation of this rule would require a larger drug assay test to be performed compared to what the current rule calls for. As a result, the cost of performing this test will increase by approximately \$20 per test. The price that is currently in place for Utah samples is \$80 for blood only samples, \$100 for paired blood and urine samples, and \$200 for re-analysis and confirmation of positive samples. That pricing is based on the submission of 10 or more samples at a time, and would remain the same, except for the blood only samples, which would increase to \$100. This is because the new rule would add additional testing to cover the new threshold drugs and associated levels. These costs will affect the trainers and owners because they are responsible for paying for the test.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The horse racing industry requested the agency to reconsider and propose this emergency rule to allow for standards to be established for certain drug testing as opposed to the current standard of zero tolerance. It has been represented by the horse industry and veterinarian professionals that this is a needed change in existing administrative rule. The implementation of this rule would require a larger drug assay test to be performed compared to what the current rule calls for. As a result, the cost of performing this test will increase by \$20 per test. This increase will affect the trainers and owners of the race horses as they are currently responsible for paying for the drug tests for their horses.

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

AGRICULTURE AND FOOD
HORSE RACING COMMISSION (UTAH)
350 N REDWOOD RD
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

EFFECTIVE: 03/20/2013

AUTHORIZED BY: Leonard Blackham, Commissioner

R52. Agriculture and Food, Horse Racing Commission (Utah).**R52-7. Horse Racing.****R52-7-8. Veterinarian Practices, Medication and Testing Procedures.**

1. Veterinary Practices - Treatment Restricted. Within the time period of 24 hours prior to the post time for the first race of the week until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

2. Veterinarians Under Supervision Of Official Veterinarian. Veterinarians licensed by the Commission and practicing at an authorized meeting are under the supervision of the Official Veterinarian and the Stewards. The Official Veterinarian shall recommend to the Stewards or the Commission the discipline to be imposed upon a veterinarian who violates the Rules, and he or she may sit with the Stewards in any hearing before the Stewards concerning such discipline or violation.

3. Veterinarian Report. Every veterinarian who treats any horse within the enclosure for any contagious or communicable disease shall immediately report to the official veterinarian in writing on a form approved by the Commission. The form shall include the name and location of the horse treated, the name of the trainer, the time of treatment, the probable diagnosis, and the medication administered. Each practicing veterinarian shall be responsible for maintaining treatment records on all horses to which they administer treatment during a given race meeting. These records shall be available to the Commission upon subpoena when required. Any such record and any report of treatment as described above is confidential; and its content shall not be disclosed except in a proceeding before the stewards or the Commission, or in the exercise of the Commission's jurisdiction.

4. Drugs Or Medication. Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analogs, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race which are outside of the approved drug threshold levels set forth by California Horse Racing Board (CHRB) Rule No. 1844 (Effective 02/14/12), Authorized Medication, with sections (h) (2),(e)(9) and (f) exempted, hereby incorporated by reference. ~~of a horse participating in a Commission-sanctioned race~~ shall result in disqualification by the Stewards. Accordingly clenbuterol will be treated the same as all other drugs that are not specifically authorized.

If the testing laboratory detects clenbuterol or its metabolites or analogs under the laboratory's standard operating procedures, the finding will be reported as a violation. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

5. Racing Soundness Examination. Each horse entered to race may be subject to a veterinary examination by the official veterinarian or his authorized representative for racing soundness and health on race day.

6. Positive Lab Reports. A finding by a licensed laboratory that a test sample taken from a horse contains a drug or its metabolites or analog, or any substance foreign to the natural horse shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, saliva, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all procedures of same collection and preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which he was entered, with the burden on the trainer, assistant trainer or other responsible party to prove otherwise at any hearing in regard to the matter conducted by the stewards or the Commission.

7. Intent Of Medication Rules. It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medication, and substances foreign to the natural horse.

8. Power To Have Tested. As a safeguard against the use of drugs, medication, and substances foreign to the natural horse, a urine or other acceptable sample shall be taken under the direction of the official veterinarian from the winner of every race and from such other horses as the stewards or the Commission may designate.

9. Pre-Race Testing. The stewards may require any horse entered to race to submit to a blood or other pre-race test, and no horse is eligible to start in a race until the owner or trainer complies with the required testing procedure.

10. Equipment For Official Testing. Organizations shall provide the equipment, necessary supplies and services prescribed by the Commission and the official veterinarian for the taking of or administration of blood, urine, saliva or other tests.

11. Taking Of Samples. Blood, urine, saliva or other samples shall be taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for taking samples. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of 30 minutes after entry into the test barn before a sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them. Samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the official veterinarian, his/her assistants or other persons approved by the official veterinarian from

the time they are taken until they are delivered for shipment to the testing laboratory. No person shall tamper with, adulterate, add to, break the seal of, remove or otherwise attempt to so alter or violate any sample required to be taken by this Article, except for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample or in the process of analysis.

The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered in violation of these Rules to the horse earning such purse money.

12. Laboratories Approved By The Commission. Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of Stewards shall receive reports directly from the laboratory.

13. Split Samples. As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of his horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R52-7-8-4 and R52-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

14. Facilitating The Taking Of Urine Samples. When a horse has been in the test barn more than 1-1/2 hours, a diuretic may be administered by the Official Veterinarian for the purpose of facilitating the collection of a urine sample with permission of the stewards and the trainer or the trainer's authorized test barn representative. The cost of administration of the diuretic is the responsibility of the trainer. Prior to the administration of a diuretic, a blood sample may be taken from the horse.

15. Postmortem Examination. Every horse which dies or suffers a breakdown on the racetrack in training or in competition within any enclosure licensed by the Commission and is destroyed, may undergo, at a time and place acceptable to the official veterinarian, a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death. Any other horse which expires within any enclosure may be required by the official veterinarian to undergo a postmortem examination.

A. The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or his trainer in consultation with the official veterinarian, who may be present at such postmortem examination.

B. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign

substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be procured prior to euthanasia.

C. The owner of the deceased horse shall make payment of any charges due the veterinarian employed by him to conduct the postmortem examination.

D. A record of such postmortem shall be filed with the official veterinarian by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

E. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupation license issued by the Commission.

R52-7-13. Drugs and Medication Exceptions and Illegal Practices.

1. **Horses Tested.** The winner of every race and such other horses as the stewards or commission veterinarian may designate shall be escorted by the veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the commission veterinarian or his assistant.

2. **Trainer Present at Testing.** The trainer, or his authorized representative, must be present in the testing enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the trainer or his representative, as witness of taking of the specimen. Willful failure to be present at or a refusal to allow the taking of the specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension and fine by the stewards and the matter shall be referred to the Commission for such further penalty as may be determined.

3. **Specimens Delivered to Laboratory.** All specimens taken by or under the direction of the commission veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the laboratory. The container of specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission.

4. **Medication.** The commission veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission.

5. **The Only Non-Steroidal Anti-Inflammatory Drug Permitted.** Phenylbutazone shall be administered to the horse no later than 24 hours prior to the time the horse is scheduled to race.

6. **Phenylbutazone Levels Permitted and Penalty.** No urine sample taken from a horse shall exceed 165 micrograms of phenylbutazone or its metabolites per milliliter of urine or shall not exceed 5 micrograms per milliliter of blood plasma. On a first violation period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$250.00; at concentrations above 10 ug/ml plasma: a fine of up to \$500.00.

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml

plasma or serum: a minimum fine of \$500.00; at concentrations above 10 ug/ml plasma: a fine of up to \$1,000.00.

On a third or subsequent violation within a 12-month period: a fine of \$1,000.00, a suspension of 30 days, and loss of purse.

7. **Administered under Direction of Commission Licensed Veterinarian.** Phenylbutazone must be administered under the direction of a commission licensed veterinarian.

8. **List Provided.** Horses which are on phenylbutazone shall not be indicated on the daily racing programs or any other publications except that a list of horses on phenylbutazone will be kept by the stewards.

9. **Lasix Treatment.** Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the bleeder list and for treatment on race days with the approved medication to prevent or limit bleeding during racing.

10. **Bleeders Listing.** To be placed on the bleeders list, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. A Commission licensed veterinarian, following his or her personal examination of a horse, or after consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. A universal bleeders certificate is required.

11. **License Required.** In any and all cases, private veterinarians must be licensed with the Utah Horse Racing Commission as a veterinarian in order to administer Lasix.

12. **Horse Removed From Bleeders List.** A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. **Treatment Procedure.** Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered by a Commission licensed veterinarian, [~~such using dosages not to exceed 250 mg-~~] pursuant to CHRB Rule No. 1845, section (e). (Effective 5/27/05). Authorized Bleeder Medication, which is hereby incorporated by reference. The bleeder medication is administered by the trainers veterinarian, and must be witnessed by the trainer or his designee upon their request. Administration of the bleeder medication must be reported in writing on a form designated by the Commission, to the track management no later than two hours prior to the scheduled post time of the last live race of the program.

14. **Lasix Levels Permitted and Penalty.** Any horse whose post race blood tests contains a level in excess of the levels set forth in CHRB Rule No. 1845, sections (b)-(c), (Effective 5/27/05), Authorized Bleeder Medication, hereby incorporated by reference, [~~80 nanograms of furosemide per milliliter of plasma~~] will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations. [~~Any horse whose post-race urine creatinine is less than 40 milligrams creatinine per 100 milliliters of urine, and the ratio of urine furosemide to urine creatinine does not exceed 0.15, with urine furosemide being measured in micrograms per milliliter of urine will be said to be positive for Lasix overage and in violation of Utah Horse Racing rules.~~]

A. A finding of a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facie

evidence that the medication was administered to the horse and carried in the body of the horse while participating in the race.

B. In these cases, a fine and/or suspension will be levied to such horse trainer under the trainer responsibility rule and the horse will be disqualified from the race.

15. **Horses Designated.** The horses' trainer or designated agent is responsible to enter horses correctly indicating the prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily program with a Lasix or "L". A list of horses approved for and using Lasix medication will be maintained by the stewards.

16. **Bleeder Disqualification.** Any horse that bleeds a second time in Utah shall not be able to race for a period of 30 days from the date of the second bleeding offense. Any horse that bleeds for a third time shall be suspended from racing for a period of one year from the date of the third offense. Any horse bleeding for the fourth time will be given a lifetime suspension from racing.

17. **Disqualification of Owner or Trainer.** A horse owner or trainer found to have committed illegal practices under this chapter or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and shall be distributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of the other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected.

18. **Hypodermic Instruments Prohibited.** Except by specific written permission of the presiding steward, no person within the grounds of the racing association where the horses are lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in any of his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into any horse of any medication prohibited by this rule. Every racing association is required to use all reasonable efforts to prevent the violation of this rule.

19. **Search Provisions.** Every racing association, the Commission or the stewards shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith.

20. **Daily Medication Reports.** All practicing veterinarians must submit daily to the commission veterinarian a medication report form furnished by the Commission containing the following:

- A. Name, age, sex and breed of the horse.
- B. The permitted drug used (Bute or Lasix).
- C. The time administered.
- D. The route of the administration.
- E. The report must be dated and signed by the veterinarian

so administering the medication. Any such report is confidential and its contents shall not be disclosed except in a proceeding before the stewards or the Commission or in the exercise of the Commission's jurisdiction.

21. **Prima Facia Evidence.** If the stewards find that any non-approved medication, for which the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race or post-race test sample, such presence shall constitute prima facia evidence that the horse has been illegally medicated.

22. **Trainer Responsibility.** Under all circumstances, the horse of record trainer shall be responsible for the horse he trains.

KEY: horses

Date of Enactment or Last Substantive Amendment: March 20, 2013

Notice of Continuation: August 30, 2011

Authorizing, and Implemented or Interpreted Law: 4-38-4

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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.

Agriculture and Food, Plant Industry **R68-14** Quarantine Pertaining to Gypsy Moth - Lymantria Dispar

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37445
FILED: 03/27/2013

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: Promulgated under authority of Sections 4-2-2 and 4-35-9 which requires the Department to adopt rules according to Utah Rulemaking Act (Title 63G, Chapter 3) to administer agricultural laws. Provides authority to the Department to establish and enforce quarantines to protect against destructive pests.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received in support of or opposing 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: Gypsy moth has a high probability to be artificially transported into Utah and will survive and multiply rapidly. Introduction of this pest will cause serious damage to forests, residences, parks, and agricultural tree plantings. This pest is also capable of destroying watershed areas, orchards, and is a nuisance to the general public. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 03/27/2013

Commerce, Occupational and Professional Licensing **R156-31b** Nurse Practice Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37417
FILED: 03/18/2013

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 58, Chapter 31b, provides for the licensure of licensed practical nurse, registered nurse,

advanced practice registered nurse intern, advanced practice registered nurse, advanced practice registered nurse-CRNA (certified registered nurse anesthetist) without prescriptive practice and medication aide certified. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-31b-201(3) provides that the Board of Nursing's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 31b, with respect to licensed practical nurse, registered nurse, advanced practice registered nurse intern, advanced practice registered nurse, advanced practice registered nurse-CRNA without prescriptive practice and medication aide certified.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in April 2008, it has been amended several times. In January-March 2010 the Division received numerous written comments both in support of and opposing proposed amendments which had been filed in January 2010 with respect to delegation of nursing tasks in a school setting. Following a 03/11/2010 rule hearing and the Division and Board of Nursing's review of the numerous comments received, the proposed amendments were made effective on 03/29/2010 with no further changes. In May 2008 the Division filed proposed rule amendments with respect to administration of diabetes medication to students in a school setting by unlicensed individuals. The Division conducted a 06/06/2008 rule hearing with respect to the proposed amendments. The Division also received several written comments with respect to this proposed rule amendment filing. The Division also received a 05/29/2008 email from Hunter Finch, rules analyst from the Governor's Office of Planning and Budget, in which he notified the Division of some nonsubstantive changes that needed to be made in the proposed rule amendments. The Division and Board of Nursing reviewed and considered the written comments received and comments offered during the June 2008 rule hearing and determined that no additional changes would be made in the proposed rules. This proposed rule amendment filing was made effective on 06/23/2008. An 08/25/2008 nonsubstantive rule change was filed in which nonsubstantive changes recommended by Hunter Finch in his 05/29/2008 email were made. The Division also filed proposed rule amendments in DAR File No. 31614 in June 2008 to implement H.B. 299 (2008 Legislative General Session) with respect to medication aides-certified. The Division conducted a 07/18/2008 rule hearing with respect to the proposed amendments. As a result of these proposed amendments, the Division received numerous written comments. As a result of the numerous written comments received and comments offered during the July 2008 rule hearing, the Division allowed this proposed rule amendment filing to lapse and later refiled a new proposed rule amendment filing in

December 2008 which incorporated suggestions and concerns from the comments received in June-July 2008.

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 be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 31b, with respect to licensed practical nurse, registered nurse, advanced practice registered nurse intern, advanced practice registered nurse, advanced practice registered nurse-CRNA without prescriptive practice and medication aide certified. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 03/18/2013

**Environmental Quality, Water Quality
R317-101
Utah Wastewater Project Assistance
Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 37448
FILED: 03/28/2013**

**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 19-5-104(1)(a) authorizes the Utah Water Quality Board to adopt rules to

implement awarding construction loans to political subdivisions and municipal authorities under Section 11-8-2. Title 73, Chapter 10c, authorizes the board to issue wastewater loans, credit enhancement agreements, interest buy-down agreements, and hardship grants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either supporting or opposing the rule during the last five-year review. Additionally, this rule has been amended once since the last five-year review. No comments were received during the public comment period for the rule amendment.

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 policies and procedures for implementing the Utah Wastewater Project Assistance Program. The rule contains definitions, eligibility requirements, application procedures and prioritization procedures central to the Water Quality Board's implementation of their statutory charge and should be continued.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 03/28/2013

**Health, Family Health and
Preparedness, Licensing
R432-35
Background Screening -- Health
Facilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 37441
FILED: 03/25/2013**

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-21-6, Duties of the Department states: (1) The department shall: (h) establish reasonable standards for criminal background checks by public and private entities; and (2) The department may: (c) make rules as necessary to implement the provisions of this chapter. The statute that covers the background screening process outlines the basic requirements to be followed however the rule establishes reasonable standards for the public and private entities.

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. This rule was repealed and reenacted last year with an effective date of 12/12/2012.

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: 03/25/2013

**Health, Center for Health Data, Vital
Records and Statistics
R436-1
Duties of the Department of Health**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37418
FILED: 03/19/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 26-2-2 through 26-2-4 authorize the state registrar to develop a uniform system throughout the state to register vital events. This system will register events and provide data for statistical reports. In order for those reports to have congruency from local district to local district, the state registrar is also given the authority to create forms and other processes, as necessary.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This section outlines local deputy registrars' duties, as well as the requirements for data collection. Without these, data quality for reporting purposes would diminish. Quality of legal information on certificates (names, dates, etc) would also be in doubt. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/19/2013

Health, Center for Health Data, Vital
Records and Statistics

R436-2

Infants of Unknown Parentage;
Foundling Registration

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37423
FILED: 03/21/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-6 requires that birth certificates be filed for any child deemed a foundling. It also requires the individual with custody of the foundling to submit as much information about the child as possible so the Office can create as accurate a certificate as possible. It also requires that the information be filed with the Office within 10 calendar days of the child being found.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule outlines the minimum amount of data that needs to be provided to the Office of Vital Records and Statistics so a certificate can be created. It also creates a procedure for voiding out the foundling certificate if an original birth certificate can be located and identified as belonging to the child. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
 ♦ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

Health, Center for Health Data, Vital
Records and Statistics

R436-3

Amendment of Vital Records

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37424
FILED: 03/21/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-7 authorizes the Office of Vital Records and Statistics to make rules for amending vital records. Section 78B-15-302 codifies a process by which paternity can be established for children born to unwed mothers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without the rule outlining the various processes for amending a record based on the corrections/changes desired, changes could not be made. Without the rule regarding paternity establishment, fathers could not be added to birth certificates of their children born outside of wedlock. Those fathers' rights and obligations to their children would not have legal standing. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG

288 N 1460 W

SALT LAKE CITY, UT 84116-3231

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
 ♦ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

Health, Center for Health Data, Vital
Records and Statistics

R436-4

Delayed Registration of Birth

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37425
FILED: 03/21/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 26-2-8, 26-2-14.1, 26-2-14.2, and 26-2-19 provide minimal guidance on the process of creating delayed birth, still birth, and delayed still birth records, as well as transmitting records to the state office from the local offices. While the statutes authorize these processes, they do not provide enough guidance regarding the proofs needed for establishment of a delayed record other than they should be determined by rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

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 allows the Office of Vital Records and Statistics to outline the minimum thresholds of proofs needed for the establishment of a delayed record-birth or stillbirth. Office experience with the requirements for federal identity documents (such as passports) as well as, fraud detection/prevention has led to stratification of proofs for births depending on the age of the applicant. Stillbirth certificate rules are based on CDC/ACOG definitions of

stillbirth and are meant to allow for best data collection possible on causes of death. Therefore, this rule should be continued.

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

HEALTH
 CENTER FOR HEALTH DATA,
 VITAL RECORDS AND STATISTICS
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
- ◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

**Health, Center for Health Data, Vital
 Records and Statistics
 R436-7
 Death Registration**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 37426
 FILED: 03/21/2013

**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 26-2-13, the legal and medical information needed to file a death certificate are outlined. However, Subsection 26-2-13(8)(a) requires the Office to have rules in place in the event that a cause of death cannot be determined within 72 hours of the death. This rule is in response to that subsection of the Utah Code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: This rule allows funeral directors (the statutorily liable party) to file partially completed death certificates within the allotted time, if a cause of death cannot be determined or if the case is referred to the Office of the Medical Examiner (OME) for further review. The rule also informs the funeral directors that final disposition of remains cannot be completed until a cause of death is determined unless the attending physician or the OME authorizes it. This rule is meant to prevent cremation of remains or other method of disposition that would interfere with any criminal investigation of cause of death. Therefore, this rule should be continued.

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

HEALTH
 CENTER FOR HEALTH DATA,
 VITAL RECORDS AND STATISTICS
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
- ◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

**Health, Center for Health Data, Vital
 Records and Statistics
 R436-8
 Authorization for Final Disposition of
 Deceased Persons**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 37427
 FILED: 03/21/2013

**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 Subsections 26-2-16(3) and (4), the department is authorized to create rules governing the records kept by funeral directors regarding each dead body or dead fetus for which they perform any type of service. The records are to be sent to OVRs every month on forms developed by the Office of Vital Records and

Statistics (OVRs). Section 26-2-17 details the reasons for and circumstances under which burial transit permits are to be issued by OVRs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows the department to monitor interments overall for timeliness and violations of statute prohibiting final disposition until a cause of death is established. The rule also allows the Office to trace individual bodies if criminal or public safety concerns are raised. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
♦ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

Health, Center for Health Data, Vital Records and Statistics

R436-9

Persons and Institutions Required to Keep Monthly Listings of Vital Statistics Events

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37428

FILED: 03/21/2013

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 26-2-16, funeral directors and dispositioners (if a funeral director is not used) are required to submit death certificate information on a standard form to the Office of Vital Records and Statistics (OVRs). Under Section 26-2-18, sextons or municipal/county clerks are required to submit information regarding all interments within his/her jurisdiction to the Office. Under Section 26-2-23, all health care facilities as defined in the section are required to submit information on patients in the facility necessary to complete a birth or death certificate as needed. The forms prescribed in each of these sections are developed by OVRs to ensure data quality and uniformity. OVRs paper forms and electronic registration systems ensure that OVRs and the local health office receive copies of information received sufficient to issue birth and death certificates. Data and information are also maintained on behalf of the submitting entity.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without this rule including the list of data to maintain, as well as indicating OVRs has jurisdiction over the form used, it would be extremely difficult to ensure data collection would continue within the facilities enumerated in statute in such a way that would allow for issuance of birth and death certificates. This rule also ensures that if a birth or death is not registered with the Office or a local jurisdiction within the length of time given in statute, that OVRs staff have an original source of data (such as a hospital birth log) from which to draw in order to create a delayed certificate or amend an existing certificate for any errors made. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov

◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

**Health, Center for Health Data, Vital
Records and Statistics
R436-10**

Birth and Death Certificates

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37429
FILED: 03/21/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-19 authorizes the Office of Vital Records and Statistics (OVRs) to develop rules by which local registrars are to send (transmit) data from local registrations to OVRs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule outlines the vital records for which a local jurisdiction is responsible (births and deaths that occur within their geographic boundaries). It also outlines quality control requirements that locally accepted certificates must meet in order to be considered valid registered documents. It gives local registrars the ability to reject incomplete certificates. Without this basic structure of a state/local vital records system, local registration districts would cease to be a useful tool for registering and reviewing vital records data. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

**Health, Center for Health Data, Vital
Records and Statistics
R436-12**

**Certified Copies of Vital Statistics
Records**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37430
FILED: 03/21/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-21 states that the state office may authorize local registrars to issue certified copies of certificates.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides the minimum requirements that local health departments must meet in order to issue certificates. This rule outlines certified paper and cash handling security standards. It also outlines staffing and equipment standards. Without this rule, certified paper, cash and/or personal information from the certificates would be in jeopardy. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS

CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
♦ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
♦ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

EFFECTIVE: 03/21/2013

Health, Center for Health Data, Vital
Records and Statistics
R436-13
Disclosure of Records

Health, Center for Health Data, Vital
Records and Statistics
R436-14
Copies of Data from Vital Records

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 37431
FILED: 03/21/2013

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 37432
FILED: 03/21/2013

**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: Section 26-2-22 defines who is entitled to request certified copies of vital records, including those considered to be acting as a legal representative.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-26 allows the Registrar to issue certified copies of vital records and that those copies have the same evidentiary value as the original record.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides further clarity regarding who is considered a family member and what a direct, tangible interest in a record means. Without this rule, individuals and businesses not entitled to records could gain access to them. Therefore, this rule should be continued.

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 allows the Registrar to maintain the data from the original vital record filed with the office in any format that provides a certified copy. This allows the Office of Vital Records and Statistics to use electronic databases to store the information and issue electronic verifications and paper certificates as needed. This reduces the costs of maintaining fragile paper documents. The rule give the Registrar the authority to prohibit issuance of any records the Registrar deems fraudulent, this authority is critical in fraud prevention for other state and federal agencies such as Driver's License, Office of Recovery Services, Department on

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG

Workforce Services, Passport, and Social Security. Therefore, this rule should be continued.

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

HEALTH
 CENTER FOR HEALTH DATA,
 VITAL RECORDS AND STATISTICS
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
 ♦ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

**Health, Center for Health Data, Vital
 Records and Statistics
 R436-15
 Fees**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 37433
 FILED: 03/21/2013

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-6 authorizes the Department of Health to charge fees for services and to submit those to the Legislature for approval. Statutory language requires that the fees be "reasonable and fair". The Office of Vital Records and Statistics (OVRS) is run as primarily a fee for service entity and fees are assessed for each of the Office's services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

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 that OVRS services cannot be utilized without the payment of the appropriate fee or the prior approval of the State Registrar if the requestor is seeking services at a different rate. This rule allows the Registrar to review requests from those claiming indigent or economic hardship status on a case-by-case basis and not rely on means testing. Therefore, this rule should be continued.

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

HEALTH
 CENTER FOR HEALTH DATA,
 VITAL RECORDS AND STATISTICS
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
 ♦ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

**Health, Center for Health Data, Vital
 Records and Statistics
 R436-16
 Violation of Rules**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 37434
 FILED: 03/21/2013

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-23-3 makes it illegal to fail to report facts and statistics relating to the public health -- which vital records would be considered part of. Section 26-23-4 makes it illegal for the Registrar and the employees of the Office of Vital Records and Statistics (OVRS) to accept gifts, which may be offered as incentive to assist an applicant in obtaining a vital record. Section 26-23-5 makes it illegal to falsify facts on a vital record or to create a counterfeit record. Section 26-23-5.5 outlines the criminal penalties for the illegal use of a birth certificate. Section 26-23-6 outlines civil penalties that the Department can levy on behalf of the Office

in addition to criminal penalties, if deemed necessary. Section 26-23-7 provides for enforcement procedures and Section 26-23-8 authorizes representatives of the Office to enter regulated premises (in this case, hospitals, funeral homes, and local vital records offices) and perform auditing of 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 written comments have been received.

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 puts the violation of all other rules in Title R436 on par with violation of the statutes governing OVRs. This allows counsel for OVRs to treat rules violations as violation of statute and pursue remedies in a court of law. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

**Health, Center for Health Data, Vital
Records and Statistics**
R436-17
**Review and Approval of Research
Requests**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 37435
FILED: 03/21/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-2-3 authorizes the State Registrar to collect statistics and Section 26-2-22 allows the State Registrar to provide data from the medical section of the birth and death certificates for research purposes. However, neither section of statute outlines a process or procedure for submission, review and approval of research requests.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the process for submission, review, and approval of data requests. The process for requests seeking non-identifying data is outlined as simply Registrar approval and collection of fees for the time spent compiling the data. For research requests seeking identifying information, a higher standard is outlined. The rule also clarifies that data requests are limited to research purposes and that administrative functions are not governed by this rule. This rule needs to continue so that data requests to the office meet a minimum standard regarding data quality and confidentiality and that requests are limited to public health and medical research. Finally, without the rule, the Office of Vital Records and Statistics would not be able to charge a fee for custom data compilations.

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

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov
◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

AUTHORIZED BY: Janice Houston, Director

EFFECTIVE: 03/21/2013

Insurance, Administration
R590-154
Unfair Marketing Practices Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 37421
 FILED: 03/20/2013

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: Authority for this rule comes from Subsection 31A-2-201(3), which gives the commissioner authority to write rules to implement the provisions of Title 31A. Also, Section 31A-23-302 allows the commissioner to find certain practices to be misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or to unreasonably restrain competition, and to prohibit them by 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: The rule was changed twice during the past five years, substantively and nonsubstantively. At no time during this time have written comments regarding the rule been received.

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 guidelines for producers as to what is considered to be unacceptable market conduct. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 03/20/2013

Natural Resources; Oil, Gas and Mining; Coal
R645-102
Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 37466
 FILED: 04/01/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas, and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsection 40-10-5(2) specifically authorizes an exemption from Title 40, Chapter 10, for extraction of coal as an incidental part of federal, state, or local government-financed highway, or other construction under rules established by the division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

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 is necessary as it establishes an exemption to the coal mining and reclamation requirements for extraction of coal that is incidental to a government-financed highway or other construction. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/01/2013

**Natural Resources; Oil, Gas and
Mining; Non-coal
R647-1
Minerals Regulatory Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37467

FILED: 04/01/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-8-6 provides authority to the Board of Oil, Gas and Mining to enact rules that are reasonably necessary to carry out the purposes of the Utah Mined Land Reclamation Act. More specifically, Section 40-8-20 provides authority for the Minerals Program rules to apply to all lands within the state, Section 40-8-22 provides authority to enter into cooperative agreements with other agencies, and Section 40-8-17 provides that program approval does not relieve an operator from complying with other statutes and regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to provide the general conditions for all mineral mine operators for exploration, development and reclamation within Utah. Rule R647-1 provides an introduction to the remaining Mineral Program rules in Title R647, including definition of terms, and should be continued.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-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

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/01/2013

**Natural Resources; Oil, Gas and
Mining; Non-coal
R647-2
Exploration**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37468

FILED: 04/01/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-8-6 provides authority to the Board of Oil, Gas and Mining to enact rules that are reasonably necessary to carry out the purposes of the Utah Mined Land Reclamation Act. This rule reflects the state requirements involving exploration by minerals operators. Section 40-8-13 provides authority for the filing of a Notice of Intention, Section 40-8-14 provides authority for a surety, and Section 40-8-12.5 provides authority to require reclamation by operators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes requirements for exploration of minerals and should be continued to ensure that exploration of minerals in Utah occurs with the proper protection to the public and providing for subsequent use of the lands affected.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-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

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/01/2013

**Natural Resources; Oil, Gas and
 Mining; Non-coal
 R647-3
 Small Mining Operations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 37469
 FILED: 04/01/2013

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-8-6 provides authority to the Board of Oil, Gas and Mining to enact rules that are reasonably necessary to carry out the purposes of the Utah Mined Land Reclamation Act. This rule reflects the state requirements involving mineral operations for small mines. Section 40-8-13 provides authority for the filing of a Notice of Intention, Section 40-8-14 provides authority for a surety, Section 40-8-12.5 provides authority to require reclamation, and Section 40-8-21 provides authority pertaining to suspension or termination of operations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

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 requirements for small mineral mines and should be continued to ensure that operation of Utah's small mineral mines, ten acres of disturbed area or less, occurs with the proper protection to the public, and providing for subsequent use of the lands affected.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 OIL, GAS AND MINING; NON-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

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/01/2013

**Natural Resources; Oil, Gas and
 Mining; Non-coal
 R647-4
 Large Mining Operations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 37470
 FILED: 04/01/2013

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-8-6 provides authority to the Board of Oil, Gas and Mining to enact rules that are reasonably necessary to carry out the purposes of the Utah Mined Land Reclamation Act. This rule reflects the state requirements involving mineral operations for large mines. Section 40-8-13 provides authority for the filing of a Notice of Intention, Section 40-8-14 provides authority for a surety, Section 40-8-12.5 provides authority to require reclamation by operators, and Section 40-8-21 provides authority pertaining to suspension or termination of operations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

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 requirements for large mineral mines and should be continued to ensure that operation of Utah's large mineral mines, over ten acres of disturbed area, occurs with the proper protection to the public, and providing for subsequent use of the lands affected.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-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

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/01/2013

DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes administrative procedures applicable to the Minerals Program and should be continued to provide administrative procedures at the informal and formal level to enable resolution of issues within the Division and also the Board of Oil, Gas and Mining.

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

NATURAL RESOURCES
OIL, GAS AND MINING; NON-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

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/01/2013

Natural Resources; Oil, Gas and
Mining; Non-coal
R647-5
Administrative Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37471
FILED: 04/01/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-8-6 provides authority to the Board of Oil, Gas and Mining to enact rules that are reasonably necessary to carry out the purposes of the Utah Mined Land Reclamation Act. In addition, the Utah Administrative Procedures Act, Title 63G, Chapter 4, provides authority for the administrative procedures applicable to this Minerals Program in Rule R647-5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY

Public Safety, Fire Marshal
R710-5
Automatic Fire Sprinkler System
Inspecting and Testing

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37443
FILED: 03/25/2013

**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 53-7-225.5(2) directs the Utah Fire Prevention Board to make rules prescribing an application form and standards for certification qualification and for renewal and revocation for those who inspect and test automatic fire sprinkler systems.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R710-5 has been amended four times in the past five years. There have been no written comments received in that same five year period. It is the practice of the Utah Fire Prevention Board to notify anyone who might be affected by any amendments to the rule at least 14 days in advance of the meetings of the Board. This allows and encourages public participation in the rule making

process. Prior to any action, the Board always requests and holds time during the meetings to allow for public comment and input. This process seems to have reduced or eliminated the submission of written comments to the Board.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Automatic fire sprinkler systems are fire suppression systems located in public and private schools, colleges, universities, hospitals, nursing homes, state-owned facilities, businesses, etc. When automatic fire sprinkler systems are in place, the individual sprinkler heads activate based upon heat within the protected area and controls the fire even before a local fire department arrives. Due to their functioning process, it is imperative that these systems operate correctly. This rule provides the requirements for the service technicians that inspect and test these life-saving systems. Such systems are required to be inspected, tested and tagged as operational on an annual basis. Over the past five years, such systems have been found to be in a state that would not have allowed the system to operate in an efficient manner and such detections would not have been identified without this program. Therefore, this rule should be continued to ensure the continued safety of the public.

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:

◆ Coy Porter by phone at 801-284-6358, by FAX at 801-284-6351, or by Internet E-mail at coyporter@utah.gov

AUTHORIZED BY: Coy Porter, State Fire Marshal

EFFECTIVE: 03/25/2013

Public Service Commission,
Administration
R746-332

Depreciation Rates for Water Utilities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37451
FILED: 03/28/2013

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-24 gives the Public Service Commission the authority to require a utility to conform its depreciation accounts to the rates ascertained, determined, and fixed by the commission.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received in the last five years.

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 needs to remain in effect to provide plant service life guidelines for those water utilities that cannot afford to perform depreciation studies on their own plant. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 03/28/2013

Public Service Commission,
Administration
R746-402

Rules Governing Reports of Accidents
by Electric, Gas, Telephone, and Water
Utilities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 37452
FILED: 03/28/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1 authorizes the Public Service Commission (PSC) to supervise and regulate utilities, and Section 54-4-14 authorizes the PSC to require utilities to perform specific acts intended to promote and safeguard the health and safety of employees, customers and the public. Section 54-4-16 requires the PSC to investigate accidents associated with utility property.

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 comments to this rule since the last five-year review in 2008.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary that this rule be continued because accidents of major importance may have an impact on rates. Also, the commission has a duty to investigate accidents involving utility property and resulting in loss of life or injury to persons or property.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 03/28/2013

Public Service Commission,
Administration
R746-405
Filing of Tariffs for Gas, Electric,
Telephone, and Water Utilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37450
FILED: 03/28/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1 authorizes the Public Service Commission to supervise and regulate utilities, and Section 54-3-2 requires the establishment of rules for the process, format, construction, and content of utility tariffs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R746-405 was amended in 2012 as a result of the amendment comments that were received from CenturyLink and Rocky Mountain Power regarding process and filing requirements of filing tariffs. The commission took the comments into consideration and changed the language to eliminate the requirement for an "exact copy" and substitute a requirement for electronic and paper versions that are "substantially the same". This new language was developed in cooperation with the two utilities who requested this rule change.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary that this rule be continued because it contains the process, format, construction, and content guidelines utility companies need when filing tariffs.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 03/28/2013

NOTICES OF FIVE-YEAR EXPIRATIONS

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 (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires.

Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

Health, Center for Health Data, Vital
Records and Statistics
R436-11
Local Registrars

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 37437

FILED: 03/22/2013

SUMMARY: The five-year review for this rule should have been filed by 12/03/2012. Due to a clerical error at the Division of Administrative Rules, the error was not discovered until 03/22/2013. This rule expired as of 12/04/2012. See the Editor's Note included in this issue, April 15, 2013, of the Bulletin for further details.

EFFECTIVE: 12/04/2013

End of the Notices of Notices of Five Year Expirations 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

Agriculture and Food

Animal Industry

No. 37248 (R&R): R58-6. Poultry

Published: 02/15/2013

Effective: 03/25/2013

No. 37246 (AMD): R58-18. Elk Farming

Published: 02/15/2013

Effective: 03/25/2013

No. 37247 (AMD): R58-19. Compliance Procedures

Published: 02/15/2013

Effective: 03/25/2013

Human Services

Recovery Services

No. 37229 (AMD): R527-38. Unenforceable Cases

Published: 02/15/2013

Effective: 03/25/2013

Public Safety

Criminal Investigations and Technical Services, Criminal Identification

No. 37232 (NEW): R722-360. Certificate of Removal from the Sex Offender and Kidnap Offender Registry

Published: 02/15/2013

Effective: 03/25/2013

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, 2013 through April 01, 2013. 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>Facilities Construction and Management</u>					
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities and Construction and Management	37357	5YR	02/20/2013	2013-6/49
R23-22	General Procedures for Acquisition and Selling of Real Property	37358	5YR	02/20/2013	2013-6/49
<u>Fleet Operations</u>					
R27-3	Vehicle Use Standards	36949	AMD	03/07/2013	2012-22/11
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-6	Poultry	37248	R&R	03/25/2013	2013-4/6
R58-18	Elk Farming	37246	AMD	03/25/2013	2013-4/12
R58-19	Compliance Procedures	37247	AMD	03/25/2013	2013-4/13
R58-21	Trichomoniasis	36962	AMD	01/04/2013	2012-22/16
<u>Horse Racing Commission (Utah)</u>					
R52-7	Horse Racing	37420	EMR	03/20/2013	Not Printed
<u>Plant Industry</u>					
R68-5	Grain Inspection	37249	5YR	02/05/2013	2013-5/189
R68-14	Quarantine Pertaining to Gypsy Moth - Lymantria Dispar	37445	5YR	03/27/2013	Not Printed
<u>Regulatory Services</u>					
R70-310	Grade A Pasteurized Milk	37027	AMD	01/29/2013	2012-23/6
R70-320-18	Transport Tanks, Operators	36915	AMD	01/29/2013	2012-21/8
R70-330	Raw Milk for Retail	36914	AMD	01/29/2013	2012-21/9
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-2	Capitol Hill Complex Facility Use	37064	AMD	01/07/2013	2012-23/9
COMMERCE					
<u>Occupational and Professional Licensing</u>					
R156-1	General Rule of the Division of Occupational and Professional Licensing	37395	NSC	04/01/2013	Not Printed
R156-1-102	Definitions	37199	AMD	03/11/2013	2013-3/2
R156-3a-102	Definitions	37073	AMD	01/24/2013	2012-24/6
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	37074	AMD	01/24/2013	2012-24/7
R156-31b	Nurse Practice Act Rule	37417	5YR	03/18/2013	Not Printed
R156-37	Utah Controlled Substances Act Rule	37040	AMD	01/08/2013	2012-23/18

R156-37-502	Unprofessional Conduct	37175	NSC	01/30/2013	Not Printed
R156-37f	Controlled Substance Database Act Rule	37039	NEW	01/08/2013	2012-23/21
R156-44a	Nurse Midwife Practice Act Rules	37071	AMD	01/22/2013	2012-24/11
R156-49	Dietitian Certification Act Rule	37273	5YR	02/07/2013	2013-5/189
R156-53	Landscape Architects Licensing Act Rule	37274	5YR	02/07/2013	2013-5/190
R156-68	Utah Osteopathic Medical Practice Act Rule	37272	5YR	02/07/2013	2013-5/191
R156-82	Electronic Prescribing Act Rule	37202	NEW	03/11/2013	2013-3/5
R156-82	Electronic Prescribing Act Rule	37396	NSC	04/01/2013	Not Printed

Real Estate

R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	36973	AMD	01/02/2013	2012-22/19
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Securities

R164-31-1	Guidelines for the Assessment of Administrative Fines	37042	AMD	01/08/2013	2012-23/26
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CORRECTIONS

Administration

R251-114	Offender Long-Term Health Care - Notice	37389	5YR	03/07/2013	2013-7/61
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CRIME VICTIM REPARATIONS

Administration

R270-1	Award and Reparation Standards	37061	AMD	01/07/2013	2012-23/27
R270-1	Award and Reparation Standards	37166	NSC	01/30/2013	Not Printed
R270-2	Crime Victim Reparations Adjudicative Proceedings	37063	AMD	01/07/2013	2012-23/33
R270-2	Crime Victim Reparations Adjudicative Proceedings	37167	NSC	01/30/2013	Not Printed

EDUCATION

Administration

R277-484	Data Standards	37145	AMD	02/21/2013	2013-2/4
R277-487	Public School Student Confidentiality	37144	AMD	02/21/2013	2013-2/7
R277-502	Educator Licensing and Data Retention	37058	AMD	01/07/2013	2012-23/34
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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired
 NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

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	37409	R426-2	EMR	03/14/2013	2013-7/55
	37398	R426-6	EXD	03/01/2013	2013-7/71
	37408	R426-6	EMR	03/14/2013	2013-7/59

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	36727	R307-345	CPR	02/01/2013	2013-1/54
	36728	R307-346	NEW	02/01/2013	2012-19/69
	36728	R307-346	CPR	02/01/2013	2013-1/57
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	37199	R156-1-102	AMD	03/11/2013	2013-3/2

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	37125	R612-200	NEW	02/25/2013	2013-2/62	
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