

# UTAH STATE BULLETIN

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

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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: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. 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)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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# **SPECIAL NOTICES**

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## **Health Health Care Financing, Coverage and Reimbursement Policy**

### **Notice for May 2017 Medicaid Rate Changes**

Effective May 1, 2017, 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/lookup/CoverageLookup.php>.

**End of the Special Notices Section**



# EXECUTIVE DOCUMENTS

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Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

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## **Declaring a State of Emergency Due to Flooding and Potential Additional Flooding, Utah Exec. Order No. 2017-2**

### **EXECUTIVE ORDER**

Declaring a State of Emergency Due to Flooding and Potential Additional Flooding

**WHEREAS**, on February 7th to February 27th of 2017, a significant weather system brought heavy rain, snow, and extensive snowmelt to Northern Utah;

**WHEREAS**, the Counties of Box Elder and Cache, and the communities of Brigham City, Garland, Elwood, Tremonton, Clarkston, Lewiston, and North Logan received the greatest and most significant amount of moisture;

**WHEREAS**, the snow pack in Northern Utah reached over 200% and additional rain and snow on top of the near record snowpack caused expeditious melt and widespread flooding;

**WHEREAS**, the widespread flooding caused severe damage to roads, bridges, culverts, homes, businesses, utilities, and to other private and public facilities and agriculture, overburdening the communities;

**WHEREAS**, the remaining snowpack continues to melt, causing rivers, streams, and tributaries to overflow or breach their banks;

**WHEREAS**, on February 14, 2017, Box Elder County declared a local emergency, and on February 15, 2017, Cache County declared a local emergency;

**WHEREAS**, the circumstances of this significant flood event were beyond the capacity of the services, personnel, equipment, and facilities of any single city, county, or city and county, and require the combined forces of a mutual aid region or regions to combat;

**WHEREAS**, the Utah Department of Public Safety, Division of Emergency Management increased activities to support the incident, implement response procedures, and coordinated resources to support local officials in alleviating the immediate social and economic impacts to people, property, and infrastructure, and is continuing to assess the magnitude of the event;

**WHEREAS**, these conditions do create a "State of Emergency" within the intent of the Disaster Response and Recovery Act found in Title 53, Chapter 2a of the Utah Code Annotated 1953, as amended;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the power vested in me by the Constitution and Laws of the State of Utah, do hereby order that:

**IT IS FOUND DETERMINED, AND DECLARED** that a "State of Emergency" exists due to the aforesaid circumstances requiring aid, assistance, and relief from State resources.

**I HEREBY ORDER** the continued execution of the State Emergency Operations Plan and assistance from State government as needed and coordinated by the Department of Public Safety.

**IN TESTIMONY, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah on this, the 31st day of March 2017.

(State Seal)

**Gary R. Herbert**  
Governor, State of Utah

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor, State of Utah

2017/002/EO

**End of the Executive Documents Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between March 16, 2017, 12:00 a.m., and March 31, 2017, 11:59 p.m. are included in this, the April 15, 2017, 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 (example). Deletions made to existing rules are struck out with brackets surrounding them (~~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 usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may 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 Office 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, 2017. 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, 2017, the agency may notify the Office 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 Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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, R15-4-5a, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page**

**Health, Disease Control and  
Prevention, Environmental Services  
R392-302  
Design, Construction and Operation of  
Public Pools**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41381

FILED: 03/21/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update the rule with innovations in recreational aquatic safety and to allow for more options in construction and operation of pools.

**SUMMARY OF THE RULE OR CHANGE:** Definitions for AED, Backwash, Collection Zone, CPR, Onsite Septic System, and Waste Water have been added. References to many standards and applicable rules have been updated. A new Section R392-502-34 has been created, with correlating references throughout this rule, to standardize the size and text of required signage. A statement requiring public pools to meet the requirements of Rule R392-302 has been added. Approved backflow preventers may be used instead of air gaps for the water supply. Section R392-302-5 has been renamed "Waste Water" and now allows for alternate methods of discharging water that is not backwash. Plan review requirements have been expanded to include a requirement that plans be stamped by an engineer licensed in the state of Utah; construction may only begin after a review of the plans has been completed; reviews must be completed within 30 days of submittal; plans will have to be changed to meet the review criteria. This change also requires manufactured components to be installed according to manufacturer's recommendations. Requirements for underwater seats, benches, and footholds have been clarified. Language has been added for local health departments to allow decks to slope towards a pool under certain circumstances. Section R392-502-14 is renamed "Fencing and Barriers" and has been changed to address safety and exclusion of bathers when a portion of a facility is closed but accessible to the public. This replaces language concerning a separation of bathing and non-bathing areas that is no longer relevant for current pool design standards. Requirements for chlorine dosing and generating equipment have been set. In Section R392-502-24, the reference to fixtures has been taken out and moved to Section R392-502-25 as it does not apply to Section R392-502-24. Dressing rooms are now required to have at least one covered waste receptacle. The requirement for dressing rooms to exit to the shallowest area of the pool has been removed. Section R392-502-25 has been renamed "Restroom and Shower Facilities" and makes clear that restrooms and showers must

be provided for each gender and that privacy shall be ensured. The use of unisex facilities are addressed and will count towards the total number of required fixtures. Hand drying utilities are now required at lavatories. Operators are required to keep facilities clean and sanitary. The characteristics of materials used in construction are listed, including the exclusion of the use of carpet. Maximum chlorine level has been set and all products shall be used according to the product label. Relevant emergency telephone numbers may be posted instead of a specific list. Lifeguard training standards have been updated and clarified. In Subsection R392-502-25(4), "may" is changed to "shall" as clarification of the intent of the original language. Subsection R392-502-25(7)(f) is moved to (7)(e) and reworded for clarification. Children aged 14 and under shall not use a pool without responsible adult supervision. Children under five years of age shall not use a spa. In Subsection R392-502-31(2)(h) an exception is now allowed to the deck and pool separation requirements as long as the top surface of the common pool side wall does not exceed 18 inches. The requirements for Subsection R392-302-31(5)(f) signs at slides has been changed to be more comprehensive and to allow variation from slide to slide as not all slides are the same. Signage for interactive water features is required. The exemptions of interactive water features has been changed so that if outlets are submerged, they are not exempt from meeting Subsection R392-302-18(1) (VGB requirements). Other exemptions have been expanded to include the following requirements: restroom and cleansing showers; diving areas; depth markings; underwater lighting; supervision of bathers; bather load; and pool color. The definition of a collection zone is introduced. Construction and design requirements of the collection zone are added.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-15-2 and Subsection 26-1-30(23)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings at the state level because the role and work load of the Department of Health in rule management and inspection standardization will not change. Any costs or savings not anticipated will come out of existing budgets.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings for local health departments because the role and work load of those agencies in collecting fees, conducting sanitation inspections, and issuing certificates is based on the number of operating pools, which is not influenced by these changes. Regarding cities, counties, public school districts, these changes will apply to new construction or remodeling of existing pools. Public pool sizes range from the 500 to 9,600 square feet. These proposed changes are estimated to increase construction and remodeling costs by 1% to 3% or \$145 to \$165 per square feet. The range of construction costs are estimated to be \$90,625 (625 sq ft \* \$145 / sq ft) to \$1,584,000 (\$165 sq ft \* 165 / sq ft). The individual local government increased costs are anticipated to be \$907

(\$90,625 \* 1%) up to \$47,520 (\$1,584,000 \* 3%) for cities, counties, and school districts planning on constructing or remodeling a public swimming pool.

♦ **SMALL BUSINESSES:** These changes will apply to new construction or remodeling of existing pools. Public pool sizes range from the 500 to 9,600 square feet. These proposed changes are estimated to increase construction and remodeling costs by 1% to 3% or \$145 to \$165 per square foot. The range of construction costs are estimated to be \$90,625 (625 sq ft \* \$145 / sq ft) to \$1,584,000 (\$165 sq ft \* 165 / sq ft). The individual business increased costs are anticipated to be \$907 (\$90,625 \* 1%) up to \$47,520 (\$1,584,000 \* 3%) for small businesses planning on constructing or remodeling a public swimming pool.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These changes will apply to new construction or remodeling of existing pools. Public pool sizes range from the 500 to 9,600 square feet. These proposed changes are estimated to increase construction and remodeling costs by 1% to 3% or \$145 to \$165 per square foot. The range of construction costs are estimated to be \$90,625 (625 sq ft \* \$145 / sq ft) to \$1,584,000 (\$165 sq ft \* 165 / sq ft). The individual business increased costs are anticipated to be \$907 (\$90,625 \* 1%) up to \$47,520 (\$1,584,000 \* 3%) for large businesses planning on constructing or remodeling a public swimming pool.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The individual increased costs are anticipated to be \$907 (\$90,625 \* 1%) up to \$47,520 (\$1,584,000 \* 3%) for persons planning on constructing or remodeling a public swimming pool.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments update the construction and operation of pools to address innovations in safety. The proposed language requires plans to include the stamp of a licensed engineer and governs timing of the plan review and construction. The amendment will now allow backflow preventers instead of air gaps for water supply and allows alternate methods for discharging waste water that is not backwash. It adds a section addressing signage in order to standardize the size and text of signs in the pool area. It requires manufacture components to be installed according to its manufacturers and addresses requirements for benches, footholds, deck slopes, water features. It addresses requirements for fencing and other barriers between bathing and nonbathing areas. It addresses requirements for dressing rooms and bathrooms. It updates life guard standards. It sets a maximum chlorine level. It clarifies that children under the age of 14 shall have adult supervision and that children under 5 shall not use a spa. Finally, it addresses exceptions of these requirements for special purpose pools, such as spa pools. The Department of Health has estimated that these changes will increase construction or remodeling costs by 1% to 3%, i.e. \$145 to \$165 per square foot. Currently, construction costs will range from \$90,652 for a 625 ft x 125 ft pool up to \$1,584,000 for a 165 ft x 165 ft pool.

These estimations would result in an increase of \$907 for the small pool up to \$47,500 for the large pool. The proposed amendment will have a fiscal impact by increasing costs for any business involved in the construction or remodeling of public pools.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at [chrisnelson@utah.gov](mailto:chrisnelson@utah.gov) or mail at PO Box 142104, Salt Lake City, UT 84114-2104

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-302. Design, Construction and Operation of Public Pools.**

**R392-302-1. Authority and Purpose of Rule.**

This rule is authorized under Sections 26-1-5, 26-1-30(23) and 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools and provides for the prevention and control of health hazards associated with public pools which are likely to affect public health.

**R392-302-2. Definitions.**

The following definitions apply in this rule.

(1) "AED" means automated external defibrillator.

(2) "Backwash" means the process of cleaning a swimming pool filter by reversing the flow of water through the filter.

([+]~~3~~) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

([2]~~4~~) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.

(5) "Collection Zone" means the area of an interactive water feature where water from the feature will be collected and drained for treatment.

(6) "CPR" means Cardiopulmonary Resuscitation.

([3]~~7~~) "Department" means the Utah Department of Health.

([4]8) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

([5]9) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

([6]10) "Float Tank" means a tank containing a skin-temperature solution of water and Epsom salts at a specific gravity high enough to allow the user to float supine while motionless and require a deliberate effort by the user to turn over and that is designed to provide for solitary use and sensory deprivation of the user.

([7]11) "Gravity Drain System" means a pool drain system wherein the drains are connected to a surge or collector tank and rather than drawing directly from the drain, the circulation pump draws from the surge or collector tank and the surface of the water contained in the tank is maintained at atmospheric pressure.

([8]12) "High Bather Load" means 90% or greater of the designed maximum bather load."

([9]13) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

([10]14) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

([11]15) "Interactive Water Feature" means a recirculating water feature designed, installed or used for recreational use, in which there is direct water contact from the feature with the public, and when not in operation, all water drains freely so there is no ponding.

([12]16) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

([13]17) "Lifeguard" means an attendant who supervises the safety of bathers.

([14]18) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

([15]19) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(20) "Onsite Septic System" means an approved onsite waste water system designed, constructed, and operated in accordance with Rule 317-4.

([16]21) "Pool" means a man-made basin, chamber, receptacle, tank, or tub, above ground or in-ground, which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

([17]22) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

([18]23) "Pool Shell" means the rigid encasing structure of a pool that confines the pool water by resisting the hydrostatic pressure of the pool water, resisting the pressure of any exterior soil, and transferring the weight of the pool water (sometimes through other supporting structures) to the soil or the building that surrounds it.

([19]24) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

([20]25) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool and may be above ground or in-ground.

([21]26) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

([22]27) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

([23]28) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

([24]29) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

([25]30) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

([26]31) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

([27]32) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

([28]33) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

([29]34) "Unblockable Drain" means a drain of any size or shape such that a representation of the torso of a 99 percentile adult male cannot sufficiently block it to the extent that it creates a body suction entrapment hazard.

([30]35) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(36) "Waste Water" means discharges of pool water resulting from pool drainage or backwash.

([31]37) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

### **R392-302-3. General Requirements.**

(1) This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

(2) This rule does not regulate any private residential pool. A private residential pool that is used for swimming instruction purposes shall not be regulated as a public pool.

(3) This rule does not regulate any body of water larger than 30,000 square feet, 2,787.1 square meters, and for which the design purpose is not swimming, wading, bathing, diving, a water slide splash pool, or children's water play activities.

(4) This rule does not regulate float tanks.

(5) All public pools shall meet the requirements of this rule unless otherwise specified in R392-302.

#### **R392-302-4. Water Supply.**

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap or a backflow preventer in accordance with the International Plumbing Code as incorporated and amended in Title 15a, State Construction and Fire Codes Act.

(a) The backflow preventer must protect against contamination, backsiphonage and backpressure.

(b) Water supply lines protected by a backflow prevention device shall not connect to the pool recirculation system on the discharge side of the pool recirculation pump.

#### **R392-302-5. ~~[Sewer System]~~Waste Water.**

(1) Each public pool must connect to a public sanitary sewer or an onsite septic system.

(a) Each public pool must connect to a sanitary sewer or onsite septic system through an air break to preclude the possibility of sewage or waste backup into the piping system. Pools constructed and approved after December 31, 2010 shall be connected through an air gap.

(2) Each public pool shall discharge waste water:

(a) to a public sanitary sewer system when available within 300 feet of the property line with authorization by the local sanitary sewer authority; or

(b) to an onsite septic system when public sanitary sewer system is not within 300 feet of the property line or authorization is not available; or

(c) in accordance with Subsection R392-302-5(4) and Subsection R392-302-5(5) except for any public pool utilizing salt in the pool water.

(i) Public pools utilizing salt in the pool water shall only discharge waste water to a public sanitary sewer system or an onsite septic system which has been designed for such.

(3) A public pool shall not discharge waste water directly to storm sewers or surface waters.

(4) Except for pools utilizing salt in the pool water, a public pool may discharge waste water that is not backwash according to Subsection R392-302-5(5) if:

(a) a public sanitary sewer is not available within 300 feet of a property line or authorization to discharge to a sanitary sewer is not available; and

(b) an onsite septic system is not available or designed for the discharge amount.

(5) If a public pool meets the criteria of Subsection R392-302-5(4), the public pool shall reduce the disinfectant level to less than one part per million and:

(a) may discharge as irrigation in an area where the water will not flow into a storm drain or surface water; or

(b) may discharge on the facility's property as long as it does not flow off the property.

(6) Public pools shall not discharge waste water in a manner that will create a nuisance condition.

~~[(1) Each public pool must discharge waste water to a public sanitary sewer system if the sewer system is within 300 feet of the property line. Where no public sanitary sewer system is available within 300 feet of the property line, the local health department may approve connections made to a disposal system designed, constructed, and operated in accordance with the minimum requirements of the Department of Environmental Quality.~~

~~[(2) Each public pool must connect to a sewer or wastewater disposal system through an air break to preclude the possibility of sewage or waste backup into the piping system. Pools constructed and approved after December 31, 2010 shall connect to a sewer or wastewater disposal system through an air gap.]~~

#### **R392-302-6. Construction Materials.**

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) All public pools shall be constructed with a pool shell that meets the requirements of this section R392-302-6. Vinyl liners that are not bonded to a pool shell are prohibited. A vinyl liner that is bonded to a pool shell shall have at least a 60 mil thickness. Sand, clay or earth walls or bottoms are prohibited.

(3) The pool shell of a public pool must withstand the stresses associated with the normal uses of the pool and regular maintenance. The pool shell shall by itself withstand, without any damage to the structure, the stresses of complete emptying of the pool without shoring or additional support.

(4) In addition to the requirements of R392-302-6(3), the interior surface of each pool must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints. The owner of a non-cementitious pool shall submit documentation with the plans required in R392-302-8~~(5)~~ that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(a) for a fiberglass reinforced plastic spa pool, the International Association of Plumbing and Mechanical Officials (IAPMO) standard IAPMO/ANSI Z 124.7-~~[+997]~~2013;

(b) for a fiberglass reinforced plastic swimming pool, the IAPMO IGC 158-2000 standard;

(c) for pools built with prefabricated pool sections or pool members, the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001; or

(d) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of this section R392-302-6.

(5) The pool shell surface must be of a white or light pastel color.

#### **R392-302-7. Bather Load.**

(1) The bather load capacity of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a spa pool during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in an indoor swimming pool during maximum load.

(c) Twenty square feet, 1.86 square meters, of pool water surface area must be provided for each bather in an outdoor swimming pool during maximum load.

(d) Fifty square feet, 4.65 square meters, of pool water surface must be provided for each bather in a slide plunge pool during maximum load.

(2) The department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

#### **R392-302-8. Design Detail and Structural Stability.**

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

~~\_\_\_\_\_ (5) The pool operator or the designing architect or engineer shall submit plans for a new pool, pool renovation or pool remodeling project to the local health department for approval. This includes the replacement of equipment which is different from that originally approved by a health authority having jurisdiction. The local health department may require a pool renovation or pool remodeling project to meet the current requirements of R392-302.]~~

(5) No new pool construction or modification project of an existing pool shall begin until the requirements of Subsection R392-302-8(6) have been met.

(6) The pool owner or designee shall submit a set of plans for a new pool or modification project of an existing pool to the

local health department. This includes the replacement of equipment which is different from that originally approved by the local health department.

(a) The set of plans shall have sufficient details to address all applicable requirements of R392-302 and shall bear a stamp from an engineer licensed in the State of Utah.

(b) The local health department may exempt the pool owner from Subsection R392-302-8(6) for a modification of an existing pool if health and safety are not compromised.

(c) The set of plans shall be initially reviewed by the local health department and a letter of review sent by the local health department to the submitter, pool owner, or designee within 30 days of submittal.

(d) The pool owner shall make required changes to the plans to meet the local health department's review criteria.

(7) All manufactured components of the pool shall be installed as per manufacturer's recommendations.

#### **R392-302-9. Depths and Floor Slopes.**

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10 except for a pool used exclusively for scuba diving training.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3 except for a pool used exclusively for scuba diving training. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

#### **R392-302-10. Walls.**

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters;

(b) have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less;

(c) be tangent to the wall;

(d) have a radius at least equal to or greater than the depth of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters; and

(e) have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited except when approved by the local health officer for a special purpose pool. Underwater ledges are prohibited in areas of a pool designed for diving. Where underwater ledges are allowed, a line must mark the extent of the ledge within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

(4) Underwater seats and benches are allowed in pools so long as they conform to the following:

(a) Seats and benches shall be located completely inside of the ~~perimeter~~ shape of the pool. Where seats and benches are not located on the perimeter walls of the pool, seats and benches shall have a wall on the back of the seats and benches that extend above the operating level of the pool and is clearly visible to users.

(b) The horizontal surface shall be a maximum of 20 inches, 51 centimeter, below the water line;

(c) An unobstructed surface shall be provided that is a minimum of 10 inches, 25 centimeters, and a maximum of 20 inches front to back, and a minimum of 24 inches, 61 centimeters, wide;

(d) Seats and benches shall not transverse a depth change of more than 24 inches, 61 centimeters;

(e) The minimum horizontal separation between sections of seats and benches shall be five feet, 1.52 meters.

(f) The pool wall under the seat or bench shall be flush with the leading edge of the seat or bench and meet the requirements of R392-302-10(1) and (2);

(g) Seats and benches may not replace the stairs or ladders required in R392-302-12, but are allowed in conjunction with pool stairs;

(h) Underwater seats may be located in the deep area of the pool where diving equipment (manufactured or constructed) is installed, provided they are located outside of the minimum water envelope for diving equipment; and

(i) A line must mark the extent of the seat or bench within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

(5) Recessed footholds are allowed so long as they are at least four feet, 1.21 meters, under water and meet the requirements of R392-302-12(5)(b) and (c).

#### **R392-302-11. Diving Areas.**

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards established by the USA Diving Rules and Regulations 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal

water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches, 10.16 centimeters, in height, as required in R392-302-34(3)(a), in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet, 7.62 centimeters.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches, 10.16 centimeters, in height with a stroke width of at least one-half inch.

#### **R392-302-12. Ladders, Recessed Steps, and Stairs.**

(1) Location.

(a) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(b) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(c) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(d) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(e) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(f) No pool shall be equipped with fewer than two means of entry or exit as outlined above.

(2) Handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(3) Steps.

(a) Steps must have at least one handrail. The handrail shall be mounted on the deck and extend to the bottom step either attached at or cantilever to the bottom step. Handrails may also be mounted in the pool bottom of a wading area at the top of submerged stairs that lead into a swimming pool; such handrails must also extend to the bottom step either attached at or cantilever to the bottom step.

(b) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(c) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(d) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(e) Steps must have a line at least 1 inch, 2.54 centimeters, in width and be of a contrasting dark color for a maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(4) Ladders.

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) Pool ladders must be designed to provide a handhold, must be rigidly installed, and must be maintained in safe working condition.

(c) Pool ladders shall have a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(d) Pool ladders shall have rungs with a maximum rise of 12 inches, 30.5 centimeters, and a minimum width of 14 inches, 35.6 centimeters.

(5) Recessed Steps.

(a) Recessed steps shall have a set of grab rails located at the top of the course with a rail on each side which extend over the coping or edge of the deck.

(b) Recessed steps shall be readily cleanable and provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

**R392-302-13. Decks and Walkways.**

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide must extend completely around the pool. The deck is measured from the pool side edge of the coping if the coping is flush with the pool deck, or from the back of the pool curb if the coping is elevated from the pool deck. Pool curbs shall be a minimum of 12 inches wide. The pool deck may include the pool coping if the coping is installed flush with the surrounding pool deck. If the coping is elevated from the pool deck, the maximum allowed elevation difference between the top of the coping surface and the surrounding deck is 19 inches, 38.1 centimeters. The minimum allowed elevation is 4 inches.

(2) Deck obstructions are allowed to accommodate diving boards, platforms, slides, steps, or ladders so long as at least 5 feet, 1.52 meters, of deck area is provided behind the deck end of any diving board, platform, slide, step, or ladder. Other types of deck obstructions may also be allowed by the local health officer so long as the obstructions meet all of the following criteria:

(a) the total pool perimeter that is obstructed equals less than 10 percent of the total pool perimeter; likewise, no more than 15 feet, 4.56 meters, of pool perimeter can be obstructed in any one location;

(b) multiple obstructions must be separated by at least five feet, 1.52 meters;

(c) an unobstructed area of deck not less than five feet, 1.52 meters, is provided around or through the obstruction and located not more than fifteen feet, 4.55 meters, from the edge of the pool.

(d) the design of the obstruction does not endanger the health or safety of persons using the pool; and

(e) written approval for the obstruction is obtained from the local health official prior to, or as part of, the plan review process.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.

(a) The Local Health Officer may allow decks to slope towards the pool for deck level gutter pools if it can be demonstrated that it will not adversely affect the pool's water quality and;

(i) the deck must slope back towards the pool for a maximum distance of five feet, 1.52 meters, from the water's edge; and

(ii) the portion of the deck that slopes back towards the pool must slope towards the pool at grade of 1/4 inch, six millimeters, to 3/8 inch, ten millimeters, per linear foot; and

(iii) a minimum of three feet, 91.4 centimeters, of deck that meets 392-302-13(3) must be provided beyond the high point of said deck.

(4) Decks and walkways must be constructed to drain away any standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(6) Deck drains may not return water to the pool or the circulation system.

(7) The operator shall maintain decks in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping. The operator shall wet vacuum any carpeting as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 4 inches, 10.2 centimeters, and a maximum height of 7 inches, 17.8 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

**R392-302-14. Fencing and Barriers.**

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access when the access is open, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at

any location. Horizontal members shall be equal to or more than 45 inches, 114.3 centimeters, apart.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be installed 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use. A lock that is separate from the latch and a self locking latch shall be installed with the lock's operable mechanism (key hole, electronic sensor, or combination dial) between 34 inches, 86.4 centimeters, and 48 inches, 1.219 meters, above the ground. All gates for the pool enclosure shall open outward from the pool.

(3) The gate or door shall have no opening greater than 0.5 inches, 1.27 centimeters, within 18 inches, 45.7 centimeters, of the latch release mechanism.

(4) ~~[Bathing areas must be separated from non-bathing areas by barriers with a minimum height of 4 feet, 1.22 meters, or by a minimum of 5 feet, 1.53 meters, distance separation.]~~ Any pool enclosure which is accessible to the public when one or more of the pools are not being maintained for use, shall protect those closed pools from access by a sign meeting R392-302-34(3)(a) indicating the pool is closed and by using:

(a) a safety cover which restricts access and meets the minimum ASTM standard F1346-91; or

(b) a secondary barrier that is approved by the Department; or

(c) any method approved by the Department.

#### **R392-302-15. Depth Markings and Safety Ropes.**

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high as required in R392-302-34(3).

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the department that bather safety is not compromised by the elimination of the markings.

#### **R392-302-16. Circulation Systems.**

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The operator shall maintain the normal water line of the pool at the overflow rim of the gutter, if an overflow gutter is used, or at the midpoint of the skimmer opening if skimmers are used whenever the pool is open for bathing. An exemption to this requirement may be granted by the department if the pool operator can demonstrate that the safety of the bathers is not compromised.

(a) The circulation system shall meet the minimum turnover time listed in Table 1.

(b) If a single pool incorporates more than one the pool types listed in Table 1, either:

(i) the entire pool shall be designed with the shortest turnover time required in Table 1 of all the turnover times for the pool types incorporated into the pool or

(ii) the pool shall be designed with pool-type zones where each zone is provided with the recirculation flow rate that meets the requirements of Table 1.

(c) The Health Officer may require the pool operator to demonstrate that a pool is performing in accordance with the approved design.

(d) The operator shall run circulation equipment continuously except for periods of routine or other necessary maintenance. Pumps with the ability to decrease flow when the pool has little or no use are allowed as long as the same number of turnovers are achieved in 24 hours that would be required using the turnover time listed in Table 1 and the water quality standards of R392-302-27 can be maintained. The circulation system must be designed to permit complete drainage of the system.

(e) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(f) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum precoat media filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure precoat media filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, ~~[R576-201]~~R616-2, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with ~~[National Sanitation Foundation]~~NSF/ANSI 50-[2007, which is incorporated and adopted by reference]2015.

(11) Written operational instructions must be immediately available at the facility at all times.

TABLE 1  
Circulation

Pool Type	Min. Number of Wall Inlets	Min. Number of Skimmers per 3,500 square ft. or less	Min. Turnover Time
1. Swim	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	8 hrs.
2. Swim, high bather load	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.
3. Wading pool	1 per 20 ft., 6.10 m. min. of 2 equally spaced	1 per 500 sq. ft., 46.45 sq. m.	1 hr.
4. Spa	1 per 20 ft., 6.10 m.	1 per 100 sq. ft., 9.29 sq. m.	0.5 hr.
5. Wave	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.
6. Slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.
7. Vehicle slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.
8. Special Purpose Pool	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.

(12) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

(13) The circulation lines of jet systems and other forms of water agitation must be independent and separate from the circulation-filtration and heating systems.

**R392-302-17. Inlets.**

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as

provided in Subsections R392-302-31 (2)(l) and (3)(e), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

### **R392-302-18. Outlets.**

(1) No feature or circulation pump shall be connected to less than two outlets unless the pump is connected to a gravity drain system or the pump is connected to an unblockable drain. All pool outlets shall meet the following design criteria:

(a) The grates or covers of all submerged outlets in pools shall conform to the standards of ~~[ASME A112.19.8a-2008]~~ ANSI/APSP-16 2011.

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets that are connected to a pump through a single common suction line must connect to the common suction line through pipes of equal diameter. The tee feeding to the common suction line from the outlets must be located approximately midway between outlets.

(d) An outlet system with more than one outlet connected to a pump suction line must not have any valve or other means to cut any individual outlet out of the system.

(e) At least one of the circulation outlets shall be located at the deepest point of the pool and must be piped to permit the pool to be completely and easily emptied.

(f) The center of the outlet covers or grates of multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 3 feet, 0.914 meters, apart.

(g) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2) and (3).

(h) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. The centers of the outlet covers or grates of any outermost main drain outlets must be located within 15 feet, 4.57 meters, of a side wall.

(i) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(j) No operator shall allow the use of a pool with outlet grates or covers that are broken, damaged, missing, or not securely fastened.

(2) Notwithstanding Section R392-302-3, all public pools must comply with Subsections R392-302-18(2) and (3). The pool operator shall not install, allow the installation of, or operate a pool with a drain, drain cover, or drain grate in a position or an application that conflicts with any of the following mandatory markings on the drain cover or grate under the standard required in R392-302-18(1)(a):

- (a) whether the drain is for single or multiple drain use;
- (b) the maximum flow through the drain cover; and
- (c) whether the drain may be installed on a wall or a floor.

(3) The pool operator shall not install, allow the installation of, or operate a pool with a drain cover or drain grate unless it is over or in front of:

(a) the sump that is recommended by the drain cover or grate manufacturer;

(b) a sump specifically designed for that drain by a Registered Design Professional as defined in ~~[ASME A112.19.8a-2008]~~ ANSI/APSP-16 2011; or

(c) a sump that meets the ~~[ASME A112.19.8a-2008]~~ ANSI/APSP-16 2011 standard.

(4) Notwithstanding Section R392-302-3, all public pools must comply with this subsection R392-302-18(4). The pool owner or certified pool operator shall retrofit by December 19, 2009 each pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(1)(g) and R392-302-18(2) through (3)(c). The owner or operator shall meet the retrofit requirements of this subsection by any of the following means:

(a) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and install a safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when it detects a blockage; that has been tested by an independent third party; and that conforms to ASME standard A112.19.17-~~[2002]~~ 2010 or ASTM standard F2387-04(2012);

(i) To ensure proper operation, the certified pool operator shall inspect and test the vacuum release system at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the vacuum release system in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(ii) The vacuum release system shall include a notification system that alerts patrons and the pool operator when the system has inactivated the circulation system. The pool operator shall submit to the local health department for approval the design of the notification systems prior to installation. The system shall activate a continuous clearly audible alarm that can be heard in all areas of the pool or a continuous visible alarm that can be seen in all areas of the pool. A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-34(1)(2) and (3)(b) [An easily readable sign] shall be posted next to the sound or visible alarm source. The sign shall state, "DO NOT USE THE POOL IF THIS ALARM IS ACTIVATED." and provide the phone number of the pool operator.

(iii) No operator shall allow the use of a pool that has a single drain with a safety vacuum release system if the safety vacuum release system is not functioning properly.

(b) Install an outlet system that includes no fewer than two suction outlets separated by no less than 3 feet, 0.914 meters, on the horizontal plane as measured from the centers of the drain covers or grates or located on two different planes and connected to pipes of equal diameter. The outlet system shall meet the requirements of R392-302-18(1)(a) through R392-302-18(1)(g) and 18(2) through (3)(c);

(c) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and installing (or having an existing) gravity drain system;

(d) Install an unblockable drain that meets the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c); or

(e) Any other system determined by the federal Consumer Products Safety Commission to be equally effective as, or better than, the systems described in 15 USC 8003 (c)(1)(A)(ii) (I), (III), or (IV) at preventing or eliminating the risk of injury or death associated with pool drainage systems.

### **R392-302-19. Overflow Gutters and Skimming Devices.**

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area equal to or less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping or grating must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with ~~[National Sanitation Foundation]~~ NSF/ANSI 50-~~[2007]~~2015 standards or equivalent are permitted on any pool with a surface area equal to or less than 3,500 square feet, 325.15 square meters. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. The local health department may allow a higher maximum flow through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations. Skimmers shall be installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a system to prevent air-lock in the suction line. The anti-air-lock may be accomplished through the use of an equalizer pipe or a surge tank or through any other arrangement approved by the Department that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level. If an equalizer pipe is used, the following requirements must be met:

(a) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump;

(b) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter and must be designed to control velocity through the pipe in accordance with section R392-302-16(3);

(c) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate dedicated outlet with an anti-entrapment outlet cover in the floor of the pool that meets the requirements of ~~[ASME A112.19.8a-2008]~~ANSI/APSP-16 2011; and

(d) The equalizer pipe must be protected with a cover or grate that meets the requirements of ~~[ASME A112.19.8a-2008]~~ANSI/APSP-16 2011 and is sized to accommodate the design flow requirement of R392-302-19(5).

(9) The operator shall maintain proper operation of all skimmer weirs, float valves, check valves, and baskets. Skimmer baskets shall be maintained in a clean and sanitary condition.

(10) Where skimmers are used, a continuous handhold is required around the entire perimeter of the pool except in areas of the pool that are zero depth and shall be installed not more than 9 inches, 2.86 centimeters, above the normal operating level of the pool. The decking, coping, or other material may be used as the handhold so long as it has rounded edges, is slip-resistant, and does not exceed 3.5 inches, 8.89 centimeters, in thickness. The overhang of the coping, decking, or other material must not exceed 2 inches, 5.08 centimeters, nor be less than 1 inch, 2.54 centimeters beyond the pool wall. An overhang may be up to a maximum of 3 inches to accommodate an automatic pool cover track system.

### **R392-302-20. Filtration.**

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, precoat media filter, a cartridge filter or other filter types deemed equivalent by the Department. All filters must comply with the standard NSF/ANSI 50-~~[2007]~~2015.

(4) Gravity and pressure rapid sand filter requirements.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filter requirements.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area. The minimum flow rate requirement may be reduced to a rate of no less than 10 gallons per minute per square foot of bed area where a multiple filter system is provided, and where the system includes a valve or other means after the filters which is designed to regulate the backwash flow rate

and to assure that adequate backwash flow can be achieved through each filter per the filter manufacturer's requirements.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Vacuum or pressure type precoat media filter requirements.

(a) The filtering area must be compatible with the design pump capacity as required by R392-302-16(7). The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat media filter is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-34(1), (2) and (3)(b)~~[visible precautionary statement]~~ warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth or other filter aids must be provided.

(7) The department may waive ~~[National Sanitation Foundation,]~~ NSF/ANSI 50-~~[2007,]~~2015 standards for precoat media filters and approve site-built or custom-built vacuum precoat media filters, if the precoat media filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum precoat media filters must comply with all design requirements as specified in Subsection

R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the department may be acceptable. Where the department or the local health department determines that a potential cross-connection exists, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filter requirements.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

### **R392-302-21. Disinfectant and Chemical Feeders.**

(1) A pool must be equipped with ~~[a disinfectant feeder or feeders]~~ disinfectant dosing or generating equipment which conform to the ~~[National Sanitation Foundation,] NSF/ANSI 50-[2007]2015,~~ standards relating to ~~[adjusted output rate chemical feeding equipment and flow through chemical feeding equipment for swimming pools]~~ mechanical chemical feeding equipment, or be deemed equivalent by the department.

(2) All chlorine dosing and generating equipment, including erosion feeders, or in-line electrolytic and brine/bath generators, shall be designed with a capacity to provide the following, depending on the intended use:

(a) Outdoor pools: 4.0 pounds of free available chlorine per day per 10,000 gallons of pool water; or

(b) Indoor pools: 2.5 pounds of free available chlorine per day per 10,000 gallons of pool water.

(2) Where oxidation-reduction potential controllers are used, the operator shall perform supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the operator shall perform inspections, calibration checks, and cleaning of sensor probes at least weekly.

(3) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment

systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) The operator shall not keep substances which are incompatible with chlorine in the chlorine enclosure.

(c) The operator shall secure chlorine cylinders to prevent them from falling over. The operator shall maintain an approved valve stem wrench on the chlorine cylinder so the supply can be shut off quickly in case of emergency. The operator shall keep valve protection hoods and cap nuts in place except when the cylinder is connected.

(d) A sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-34(1), (2) and (3)(a) shall be attached to the entrance door[Doors] to chlorine gas and equipment rooms that reads, "DANGER CHLORINE GAS" [must be labeled DANGER CHLORINE GAS in letters at least 4 inches, 10.16 centimeters, in height] and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) The operator shall keep an unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(4) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(5) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(6) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

**R392-302-22. Safety Requirements and Lifesaving Equipment.**

(1) Areas of a public pool with water depth greater than six feet or a width greater than forty feet and a depth greater than four feet where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard stations in accordance with Table 2. Elevated lifeguard stations shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet and a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a first aid kit which includes a minimum of the following items:

- 2 Units eye dressing packet;
- 2 Units triangular bandages;
- 1 CPR shield;
- 1 scissors;
- 1 tweezers;
- 6 pairs disposable medical exam gloves; and

Assorted types and sizes of the following: self adhesive bandages, compresses, roller type bandages and bandage tape.

(a) The operator shall keep the first-aid kit filled, available, and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. The operator shall maintain it in good repair and operable condition. The operator and lifeguards shall prevent the removal of lifesaving equipment or use of it for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-34(1), (2) and (3)(a) shall be posted. The sign shall state: [must be placed in plain view and shall state:] WARNING - NO LIFEGUARD ON DUTY [~~and BATHERS SHOULD NOT SWIM ALONE, with clearly legible letters, at least 4 inches high, 10.16 centimeters].~~ In addition, the sign shall state in text that meets the requirements of "2 Inch Safety Sign" in R392-302-34(1), (2) and (3)(b) "BATHERS

SHOULD NOT SWIM ALONE", and [must also state] CHILDREN 14 AND UNDER [SHOULD] SHALL NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2  
Safety Equipment and Signs

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Station	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube (used as a substitute for ring buoys when lifeguards are present)	1 per 2,000	None sq. ft., 185 sq. meters, of pool area or fraction
Life Pole or Shepherds Crook	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

**R392-302-23. Lighting, Ventilation and Electrical Requirements.**

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if the pool operator demonstrates that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, artificial lighting shall be provided so that all areas of the pool, including the deepest portion of the pool shall be visible. Underwater lights shall provide illumination equivalent to 0.5 watt of incandescent lamp light per square foot, 0.093 square meter, of pool water surface area. The Local Health Officer may waive underwater lighting requirements if overhead lighting provides a minimum of 15 foot candles, 161 lux, illumination over the entire pool surface.

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck

areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the ~~[National Fire Protection Association 70:—]~~National Electrical Code ~~[2005 edition which is adopted and incorporated by reference]~~as incorporated under Title 15a, State Construction and Fire Codes Act.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code ~~as incorporated under Title 15a, State Construction and Fire Codes Act~~, without the written approval of the department. The department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

- (i) For underwater lighting,
- (ii) electrically powered automatic pool shell covers, and
- (iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, pool equipment rooms, access spaces, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2004, which is incorporated and adopted by reference.

**R392-302-24. Dressing Rooms.**

(1) The operator shall maintain all areas and fixtures within dressing rooms in an operable, clean and sanitary condition. ~~[Dressing rooms must be equipped with minimum fixtures as required in Subsection R392-302-25(1). The local health department may exempt any bathers from the total number of bathers used to calculate the fixtures required in Subsection R392-302-25(1) who have private use fixtures available within 150 feet, 45.7 meters of the pool.]~~

(2) ~~Where dressing rooms are provided, [A]a separate dressing room [with required shower areas] must be provided for each [sex]gender.~~ The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) At least one covered waste receptacle must be provided in each dressing room. [A dressing room must exit to the shallowest area of the pool. The dressing room exit door and the pool deck must be separated by at least 10 feet, 3.05 meters, and be connected by an easily cleanable walkway.]

**R392-302-25. ~~[Toilets]~~Restroom and Shower[s] Facilities.**

(1) The facility shall provide a restroom with shower facility for each gender.

(a) The entrances and exits must be designed to break the line of sight into the restroom and shower facilities.

~~([+])2~~ The minimum number of toilets and showers [for dressing room fixtures] must be based upon the designed maximum bather load.

(a) Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one [sex]gender.

(b) The minimum number of sanitary fixtures must be in accordance with Table 4.

(i) The local health department may exempt any bathers who have private use fixtures available within 150 feet, 45.7 meters, of the pool from the total number of bathers used to calculate the number of fixtures required.

TABLE 4  
Sanitary Fixture Minimum Requirements

Water Closets	
Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.

Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

~~([2])3~~ Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

~~([3])4~~ The facility shall provide showers[One shower head] for each [sex]gender and shall enclose these showers for privacy. A minimum of one shower head for each gender must be provided for each 50 bathers or fraction thereof.

~~([4])a~~ Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) If unisex facilities are provided they may count toward the total number of required fixtures in this section as long as the unisex facilities are provided in multiples of two.

~~(5)~~<sup>6</sup> Soap must be dispensed at all lavatories and showers.

~~(a)~~ Soap dispensers must be constructed of metal or plastic.

~~(b)~~ Use of bar soap or any communal soap item is prohibited.

~~(c)~~ Disposable towels or air dryers must be provided for all lavatories.

~~(6)~~<sup>7</sup> Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

~~(8)~~ The operator shall maintain all areas and fixtures within restroom facilities in an operable, clean and sanitary condition.

~~(9)~~ Restroom and shower facilities must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

~~(10)~~ Floor must slope to a drain and be constructed to prevent accumulation of water.

~~(11)~~ Carpeting may not be installed on restroom and shower floors.

~~(12)~~ Junctions between walls and floors must be covered.

~~(7)~~<sup>13</sup> At least one covered waste ~~can~~<sup>receptacle</sup> must be provided in each restroom.

#### **R392-302-26. Visitor and Spectator Areas.**

(1) Visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool. Service animals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

#### **R392-302-27. Disinfection and Quality of Water.**

(1) Disinfection Process.

(a) A pool must be continuously disinfected by a ~~process~~<sup>product</sup> which:

(i) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water;

(ii) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use;

(iii) Is compatible for use with other chemicals normally used in pool water treatment;

(iv) Does not create harmful or deleterious effects on bathers if used according to manufacturer's specifications; and

(v) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(b) The ~~[active disinfecting agent used must meet the concentration levels]~~<sup>concentration levels of the active disinfectant</sup> within the pool water shall be consistent with the label instructions

of the disinfectant and with the minimum levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

~~(i)~~ At no time shall the concentration level of free available chlorine reach a level above ten parts per million while the facility is open to bathers.

~~(2)~~ Products used to treat or condition pool water shall be used according to the product label.

~~(2)~~<sup>3</sup> Testing Kits.

(a) An easy to operate pool-side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.5 milligrams per liter, must be provided at each pool.

(b) If chlorine is the disinfectant used, it must be tested by the diethyl-p-phenylene diamine method, the leuco crystal violet method, or another test method approved by the Department.

(c) If cyanuric acid or stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 milligrams per liter must be provided.

(d) Expired test kit reagents may not be used.

~~(3)~~<sup>4</sup> Chemical Quality of Water.

(a) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten milligrams per liter, but may not exceed 100 milligrams per liter.

(b) The difference between the total chlorine and the free chlorine in a pool shall not be greater than 0.5 milligrams per liter. If the concentration of combined residual chlorine is greater than 0.5 milligrams per liter the operator shall breakpoint chlorinate the pool water to reduce the concentration of combined chlorine.

(c) Total dissolved solids shall not exceed 1,500 milligrams per liter over the startup total dissolved solids of the pool water.

(d) Total alkalinity must be within the range from 100 to 125 milligrams per liter for a plaster lined pool, 80 to 150 milligrams per liter for a spa pool lined with plaster, and 125 to 150 milligrams per liter for a pool lined with other approved construction materials.

(e) A calcium hardness of at least 200 milligrams per liter must be maintained.

(f) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

~~(4)~~<sup>5</sup> Water Clarity and Temperature.

(a) The water must have sufficient clarity at all times that the drain grates or covers in the deepest part of the pool are readily visible. As an alternative test for clarity, a black disk, six inches in diameter, must be readily visible if placed on a white field in the deepest part of the pool.

(b) Pool water temperatures for general use should be within the range of 82 degrees Fahrenheit, 28 degrees Celsius, to 86 degrees Fahrenheit, 30 degrees Celsius.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 26 degrees Celsius.

(d) The local health department[s] may grant exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

TABLE 5  
CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

The formula for calculating the saturation index is:  
 SI = pH + TF + CF + AF - TDSF  
 SI means saturation index  
 TF means temperature factor  
 CF means calcium factor  
 mg/l means milligrams per liter  
 deg F means degrees Fahrenheit  
 AF means alkalinity factor  
 TDSF means total dissolved solids factor.

Temperature		Calcium Hardness		Total Alkalinity	
deg. F	TF	mg/l	CF	mg/l	AF
32	0.0	25	1.0	25	1.4
37	0.1	50	1.3	50	1.7
46	0.2	75	1.5	75	1.9
53	0.3	100	1.6	100	2.0
60	0.4	125	1.7	125	2.1
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	250	2.0	250	2.4
94	0.8	300	2.1	300	2.5
105	0.9	400	2.2	400	2.6
128	1.0	800	2.5	800	2.9

Total Dissolved Solids	TDSF
mg/l	
0 to 999	12.1
1000 to 1999	12.2
2000 to 2999	12.3
3000 to 3999	12.4
4000 to 4999	12.5
5000 to 5999	12.55
6000 to 6999	12.6
7000 to 7999	12.65
each additional 1000, add	.05

If the SATURATION INDEX is 0, the water is chemically in balance.  
 If the INDEX is a minus value, corrosive tendencies are indicated.  
 If the INDEX is a positive value, scale-forming tendencies are indicated.  
 EXAMPLE: Assume the following factors:  
 pH 7.5; temperature 80 degrees F, 19 degrees C;  
 calcium hardness 235; total alkalinity 100; and total dissolved solids 999.  
 pH = 7.5  
 TF = 0.7  
 CF = 1.9  
 AF = 2.0  
 TDSF = 12.1  
 TOTAL: 7.5 + 0.7 + 1.9 + 2.0 - 12.1 = 0.0  
 This water is balanced.

TABLE 6  
DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine (milligrams per liter)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)

Non-Stabilized Chlorine (milligrams per liter)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (milligrams per liter)	4.0(1)	4.0(1)	4.0(1)
Iodine (milligrams per liter)	1.0(1)	1.0(1)	1.0(1)
Ultraviolet and Hydrogen Peroxide (milligrams per liter hydrogen peroxide)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved Solids (TDS) over start-up TDS (milligrams per liter)	1,500	1,500	1,500
Cyanuric Acid (milligrams per liter)	10 to 100	10 to 100	10 to 100
Maximum Temperature (degrees Fahrenheit)	104	104	104
Calcium Hardness (milligrams per liter as calcium carbonate)	200(1)	200(1)	200(1)
Total Alkalinity (milligrams per liter as calcium carbonate)			
Plaster Pools	100 to 125	80 to 150	100 to 125
Painted or Fiberglass Pools	125 to 150	80 to 150	125 to 150
Saturation Index (see Table 5)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
Chloramines (combined chlorine residual, milligrams per liter)	0.5	0.5	0.5

Note (1): Minimum Value

([5]6) Pool Water Sampling and Testing.

(a) At the direction of the Local Health Officer, the pool operator or a representative of the local health department shall collect a pool water sample from each public pool at least once per month or at a more frequent interval as determined by the Local health Officer. A seasonal public pool during the off season and any public pool while it is temporarily closed, if the pool is closed for an interval exceeding half of that particular month, are exempt from the requirement for monthly sampling. The operator or local health department representative shall submit the pool water sample to a laboratory approved under R444-14 to perform total coliform and heterotrophic plate count testing.

(b) The operator or local health department shall have the laboratory analyze the sample for total coliform and heterotrophic plate count using methods allowed under R444-14-4.

(c) If the operator submits the sample as required by local health department, the operator shall require the laboratory to report sample results within five working days to the local health department and operator.

(d) A pool water sample fails bacteriological quality standards if it:

(i) Contains more than 200 bacteria per milliliter, as determined by the heterotrophic plate count or

(ii) Shows a positive test for presence of coliform or contains more than 1.0 coliform organisms per 100 milliliters.

(e) Not more than 1 of 5 samples may fail bacteriological quality standards. Failure of any bacteriological water quality sample shall require submission of a second sample within one lab receiving day after the sample report has been received.

**R392-302-28. Cleaning Pools.**

(1) The operator shall clean the bottom of the pool as often as needed to keep the pool free of visible dirt.

(2) The operator shall clean the surface of the pool as often as needed to keep the pool free of visible scum or floating matter.

(3) The operator shall keep all pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair.

(4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers--Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29 (2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of cryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration prior to allowing bathers to reenter the pool.

**R392-302-29. Supervision of Pools.**

(1) Public pools must be supervised by an operator that is certified or recertified by a program of training and testing that is approved by the Utah Department of Health. The local health department may determine the appropriate numbers of pools any one certified operator may supervise using criteria based on pool compliance history, local considerations of time and distance, and the individual operator's abilities.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, occurrences of fecal release into the pool water or onto the pool deck, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29 (1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of

pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27 (5) fail bacteriological quality standards as defined in Section R392-302-27 (5), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) the pool operator measure and record the level of disinfectant residuals, pH, and pool water temperature four times a day (if oxidation reduction potential technology is used in accordance with this rule, the local health department may reduce the water testing frequency requirement) or

(b) the pool operator read flow rate gauges and record the pool circulation rate four times a day.

(5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(6) A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-34(1), (2) and (3)(b) must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include 911 or other local emergency numbers.[-

~~(a) Name and phone number of nearest police, fire and rescue unit;~~

~~(b) Name and phone number of nearest ambulance service;~~

~~(c) Name and phone number of nearest hospital.~~

~~(7) If a telephone is not available at poolside, emergency telephone numbers must be provided in a form that can be taken to a telephone.]~~

**R392-302-30. Supervision of Bathers.**

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool if direct fees are charged or public funds support the operation of the pool. If a public pool is normally exempt from the requirement to provide lifeguard services, but is used for some purpose that would require lifeguard services, then lifeguard services are required during the period of that use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) The Department shall approve programs which provide training and certifications to lifeguards. These programs shall meet the standards set in Subsection R392-302-30(4)(a).

~~([3]4) A lifeguard must meet each of the following:~~

~~(a) Obtain training and certification in: [Be trained and certified by the American Red Cross, Ellis and Associates, or an equivalent program as]~~

~~(i) lifeguarding by the American Red Cross or an equivalent program; and~~

~~(ii) professional level skills in CPR, AED use, and other resuscitation skills consistent with the 2010 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care; and~~

~~(iii) first aid consistent with the 2010 American Heart Association Guidelines for First Aid approved by the department in Standard Level First Aid, C.P.R. for professional rescuers, and Life Guarding.]~~

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2) ~~and~~

(c) Have full authority to enforce all rules of safety and sanitation.

~~(4)5~~ A lifeguard ~~may~~ shall not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

~~(5)6~~ Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

~~(6)7~~ Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 30 minutes with a work break of at least 10 minutes every hour.

~~(7)8~~ The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) The operator and lifeguards shall exclude any person having a communicable disease transmissible by water from using the pool. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease may not enter any public pool.

(c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

(d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.

~~(e) Where no lifeguard service is provided, children 14 and under shall not use a pool without responsible adult supervision. Children under the age of five shall not use a spa or hot tub.~~

~~(f) The lifeguards and operator shall ensure that diapers shall be changed only in restrooms not at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person using a swim diaper and waterproof swimwear discussed in subsection R392-302-30(7)(c) above must undergo a cleansing shower before returning to the pool.~~

~~(e)f~~ ~~[Easily readable p]~~ Placards that meet the requirements of "Rule Sign" in R392-302-34(1), (2) and (3)(c) and embody ~~ing~~ the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and ~~offices~~ lifeguard rooms (where applicable).

~~(f) The lifeguards and operator shall only allow diaper changing in restrooms or changing stations not at poolside. The~~

~~person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person must undergo a cleansing shower before returning to the pool.]~~

### **R392-302-31. Special Purpose Pools.**

(1) Special purpose pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of special purpose pools.

(a) Special purpose pool projects require consultation with the local health department having jurisdiction in order that consideration can be given to areas where potential problems may exist and before deviations from some of the requirements are approved.

(b) The local health officer shall require such measures as deemed necessary to assure the health and safety of special purpose pool patrons.

(2) Spa Pools.

(a) This subsection supercedes R392-302-6(5). A spa pool shell may be a color other than white or light pastel.

(b) Spa pools shall meet the bather load requirement of R392-302-7(1)(a).

(c) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The department may grant exceptions to the maximum depth requirement for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

(d) This subsection supercedes R392-302-12(1)(f). A spa pool may be equipped with a single entry/exit. A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

(e) This subsection supercedes R392-302-12(3)(c). In a spa pool where the bottom step serves as a bench or seat, the bottom riser may be a maximum of 14 inches, 35.56 centimeters.

(f) This subsection supercedes R392-302-13(1). A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa.

(g) This subsection supercedes R392-302-13(5). The department may allow spa decks or steps made of sealed, clear-heart redwood.

(h) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. ~~[The department may grant a]~~ An exception is allowed to the deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The top surface of the common pool side wall may not exceed ~~[42]18 inches, [30.48 centimeters]45.7 centimeters, in width and shall have markings indicating "No Walking" or an icon that represents the same, provided in block letters at least four inches, 10.16 centimeters, in height, as required by R392-302-34(3)(a), in a contrasting color on the horizontal surface of the common wall. Additionally the deck space around the remainder of the spa shall be a minimum of five feet, 1.52 meters.~~

(i) This subsection supercedes R392-302-15. The local health officer may exempt a spa pool from depth marking

requirements if the spa pool owner can successfully demonstrate to the local health officer that bather safety is not compromised by the elimination of the markings.

(j) A spa pool must have a minimum of one turnover every 30 minutes.

(k) Spa pool air induction systems shall meet the requirements of R392-302-16(12)(a) through (b). Jet or water agitation systems shall meet the requirements of R392-302-16(13).

(l) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(m) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(4)(e); however, the following exceptions apply:

(i) Multiple spa outlets shall be spaced at least three feet apart from each other as measured from the centers of the drain covers or grates or a third drain shall be provided and the separation distance between individual outlets shall be at the maximum possible spacing.

(ii) The department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool if the outlets are located on side walls within three inches of the pool floor and a wet-vacuum is available on site to remove any water left in the pool after draining.

(n) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.

(o) A spa pool must be equipped with an oxidation reduction potential controller which monitors chemical demands, including pH and disinfectant demands, and regulates the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27 (5)(e).

(p) A spa pool is exempt from the Section R392-302-22, except for Section R392-302-22(3).

(q) The maximum water temperature for a spa pool is 104 degrees Fahrenheit, 40 degrees Celsius.

(r) A spa pool shall meet the total alkalinity requirements of R392-302-27 (3)(d).

(s) A spa pool must have ~~[an easily readable caution]~~ a sign that meets the requirements of a "Rule Sign" in R392-302-34(1),(2) and (3)(c) ~~[mounted adjacent to the entrance to the spa or hot tub]~~ which contains the following information:

(i) The word "caution" centered at the top of the sign ~~[in large, bold letters at least two inches in height]~~.

(ii) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(iii) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(iv) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(v) Bathers should not use the spa pool alone.

(vi) Pregnant women should not use the spa pool without consulting their physicians.

(vii) Persons should not spend more than 15 minutes in the spa in any one session.

(viii) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(ix) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(x) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(t) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

(3) Wading Pools.

(a) Wading pools shall be separated from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(b) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.

(c) The deck of a wading pool may be included as part of adjacent pool decks.

(d) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(e) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(f) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.

(4) Hydrotherapy Pools.

(a) A hydrotherapy pool shall at all times comply with R392-302-27 Disinfection and Quality of Water, R392-302-28 Cleaning of Pools and R392-302-29 Supervision of Pools unless it is drained cleaned, and sanitized after each individual use.

(b) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(c) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(d) A local health officer may grant an exception to section R392-302-31(4)(a) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

(5) Water Slides.

(a) Slide Flumes.

(i) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(ii) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(iii) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(iv) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(v) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(vi) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the department.

(b) Flume Clearance Distances.

(i) A distance of at least 4 feet, 1.22 meters, must be provided between the side of a slide flume exit and a splash pool side wall.

(ii) The distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(iii) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(iv) The distance between the side of the vehicle flume exit and the pool side wall must be at least 6 feet, 1.83 meters.

(v) The distance between nearest sides of adjacent vehicle slide flume exits must be at least 8 feet, 2.44 meters.

(vi) The distance between a vehicle slide flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(c) Splash Pool Dimensions.

(i) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the department.

(ii) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(iii) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(iv) The department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the department that safe exit from the flume into the splash pool can be assured.

(v) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(d) General Water Slide Requirements.

(i) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(ii) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(iii) Water slides shall meet the bather load requirements of R392-302-7(1)(d).

(e) Water Slide Circulation Systems.

(i) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(ii) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(iii) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(iv) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all [~~National Sanitation Foundation,~~] NSF/ANSI 50-[~~2007~~]2015, Section 6. Centrifugal Pumps, standards for pool pumps.

(v) Flume supply service pumps must have check valves on all suction lines.

(vi) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(vii) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(viii) Pump reservoir areas must be accessible for cleaning and maintenance.

(f) [~~Caution~~]Slide Signs.

(i) [~~A caution s~~]Signs that meet the requirements in R392-302-34(1), (2) and (3)(c) and reflecting the slide manufacturer's recommendations must be mounted adjacent to the entrance to a water slide and at other appropriate areas in accordance with R392-302-34(1). The heading of the signs shall be, "SLIDE INSTRUCTIONS, WARNINGS, AND REQUIREMENTS". The body of the signs shall[that] state[s] at least the following[~~warnings~~]:

[~~-----~~ (A) The word caution centered at the top of the sign in large bold letters at least two inches in height.

[~~-----~~ (B) No running, standing, kneeling, tumbling, or stopping on flumes or in tunnels.

[~~-----~~ (C) No head first sliding at any time.

[~~-----~~ (D) The use of a slide while under the influence of alcohol or impairing drugs is prohibited.

[~~-----~~ (E) Only one person at a time may travel the slide.

[~~-----~~ (F) Obey instructions of lifeguards and other staff at all times.

[~~-----~~ (G) Keep all parts of the body within the flume.

~~(H) Leave the splash pool promptly after exiting from the slide.]~~

~~(A) Instructions including:~~

~~(I) proper riding position,~~

~~(II) expected rider conduct,~~

~~(III) dispatch procedures,~~

~~(IV) exiting procedures, and~~

~~(V) obeying slide attendants or lifeguards.~~

~~(B) Warnings to include:~~

~~(I) slide characteristics such as speed, and~~

~~(II) depth of water in splash zone.~~

~~(C) Requirements which include that riders being free of medical conditions identified by the manufacturer such as pregnancy, heart conditions, back conditions, or musculoskeletal conditions.~~

~~(6) Interactive Water Feature Requirements.~~

~~(a) All parts of the interactive water feature shall be designed, constructed, maintained, and operated so there are no slip, fall, or other safety hazards, and shall meet the standards of the State [e]Construction [e]Code [adopted by the Utah Legislature under Section 58-56-4. A copy of the construction code is available at the office of the local building inspector.]Title 15a, State Construction and Fire Codes Act.~~

~~(b) Interactive water feature nozzles that spray from the ground level shall be flush with the ground, with openings no greater than one-half inch in diameter. Spray devices that extend above ground level shall be clearly visible.~~

~~(c) Areas adjacent to the water feature collection zones shall be sloped away at a minimum of two percent from the interactive water feature to deck drains or other approved surface water disposal systems. A continuous deck at least 3 feet, 0.91 meters, wide as measured from the edge of the collection zones must extend completely around the interactive water feature.~~

~~(d) Water discharged from all interactive water feature fountain or spray features shall freely drain by gravity flow through a main drain fitting to a below grade sump or collection system which discharges to a collector tank.~~

~~(e) All interactive water feature foggers and misters that produce finely atomized mists shall be supplied directly from a potable water source and not from the underground reservoir.~~

~~(f) The interactive water feature shall have an automated oxidation reduction potential (ORP) and pH controller installed and in operation whenever the feature is open for use. The controller shall be capable of maintaining disinfection and pH levels within the requirements for special purpose pools listed in Table 6. In addition, an approved secondary disinfection system that meets the requirements of in R392-302-33 (4)(c) through (4)(f)(iii) shall be installed and in operation whenever the feature is open for use.~~

~~(g) A sign that meets the requirement R392-302-34(1), (2) and (3)(c)[shall be posted in the immediate vicinity of interactive water feature] stating [that pets are prohibited].;~~

~~(i) The word "CAUTION" centered at the top of the sign.~~

~~(ii) No running on or around the interactive water feature.~~

~~(iii) Children under the age of 12 must have adult supervision.~~

~~(iv) No food, drink, glass or pets are allowed on or around the interactive water feature.~~

~~(v) For the health of all users restrooms shall be used for the changing of diapers.~~

(h) If the interactive water feature is operated at night, five foot-candles of light shall be provided in the all areas of the water feature. Lighting shall be installed in accordance with manufacturer's specifications and approved for such use by UL or NSF.

(i) Hydraulics.

(i) The interactive water feature filter system shall be capable of filtering and treating the entire water volume of the water feature within 30 minutes.

(ii) The interactive water feature filter system shall draft from the collector tank and return filtered and treated water to the tank via a minimum of 4 equally spaced inlet fittings. Inlet spacing shall also meet the requirements of section R392-302-17.

(iii) The interactive water feature circulation system shall be on a separate loop and not directly interconnected with the interactive water feature pump.

(iv) The suction intake of the interactive water feature pump in the underground reservoir shall be located adjacent to the circulation return line and shall be located to maximize uniform circulation of the tank.

(v) An automated water level controller shall be provided for the interactive water feature, and the drinking water line that supplies the feature shall ~~[be protected from any back flow by an air gap]~~meet the requirements of R392-302-4.

(vi) The water velocity through the feature nozzles of the interactive water features shall meet manufacturer's specifications and shall not exceed 20 feet per second.

(vii) The minimum size of the interactive water feature sump or collector tank shall be equal to the volume of 3 minutes of the combined flow of all feature pumps and the filter pump. Access lids or doors shall be provided to the sump and collector tank. The lids or doors shall be sized to allow easy maintenance and shall provide security from unauthorized access. Stairs or a ladder shall be provided as needed to ensure safe entry into the tank for cleaning and inspection.

(viii) The suction intake from the interactive water feature circulation pump shall be located in the lowest portion of the underground reservoir.

(ix) A means of vacuuming and completely draining the interactive water feature tank shall be provided.

(j) An interactive water feature is exempt from:

(i) The wall requirement of section R392-302-10;

(ii) The ladder, recessed step, stair, and handrail requirements of section R392-302-12;

(iii) The fencing and access barrier requirements of section R392-302-14;

(iv) The outlet requirements of section R392-302-18 except any submerged outlet that may create an entrapment hazard to users of the feature shall meet the requirements of R392-302-18(1)(a);

(v) The overflow gutter and skimming device requirements of section R392-302-19;

(vi) The safety and lifesaving requirements of section R392-302-22, except that an interactive water feature shall be equipped with a first aid kit as required by subsection R392-302-22(3);

(vii) The ~~[dressing room]~~restroom and shower facility requirements of section ~~[R392-302-24]~~R392-302-25 as long as as

toilets, lavatories and changing tables are available within 150 feet;[  
and]

(viii) The pool water clarity and temperature requirements of subsection R392-302-27(4)[-];

(ix) The diving area requirement of R392-302-11 except R392-302-11(4)(a) and (b) may be required by the Local Health Officer if the Local Health Officer determines that a diving risk exists;

(x) The depth marking and safety rope requirements of R392-302-15;

(xi) The underwater lighting requirements of R392-302-23(1),(2), and (3);

(xii) The supervision of bathers requirements of R392-302-30;

(xiii) The bather load requirements of R392-302-7; and

(xiv) The pool color requirements of R392-302-6(5).

(k) All interactive water features shall be constructed with a collection zone that meets the requirements of R392-302-6. Vinyl liners that are not bonded to a collection zone surface are prohibited. A vinyl liner that is bonded to a collection zone shall have at least a 60 millimeter thickness. Sand, clay, or earth collection zones are prohibited.

(i) The collection zone material of an interactive water feature must withstand the stresses associated with the normal uses of the interactive water feature and regular maintenance. The collection zone structure and associated tanks shall withstand, without any damage to the structure, the stresses of complete emptying of the interactive water feature and associated tanks without shoring or additional support.

(ii) The collection zone of an interactive water feature must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The collection zone surfaces must be free of cracks or open joints with the exception of structural expansion joints or openings that allow water to drain to the collector tank. Openings that drain to the collector tank shall not pass a one-half inch sphere. The owner of a non-cementitious interactive water feature shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(A) for pools built with prefabricated pool sections or pool members, the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001; or

(B) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of Section R392-302-6.

### **R392-302-32. Advisory Committee.**

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

### **R392-302-33. Cryptosporidiosis Watches and Warnings.**

(1) The Executive Director or local health officer may issue cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.

(2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign [~~that meets the requirements of this section, the standard for "notice" signs established in ANSI Z353.2-2002, which is adopted by reference, and the approval of ]meeting at a minimum the ANSI Z535.2-2011 requirements for NOTICE signs with a 10-foot viewing distance and approved by the local health officer[~~to assure compliance with this section and the ANSI standard]. An Adobe Acrobat .pdf version of the sign that meets the requirements of this section [and the ANSI standard for 10-foot viewing is]shall be made available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium-targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high.[~~The sign may need to be larger, depending on the placement of the sign, to meet the ANSI standard.~~]~~~~

(a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.

(b) The body of the notice sign shall be in upper case letters at least 1.0 centimeters high and include the following four bulleted statements in black letters:

-All with diarrhea in the past 2 weeks shall not use the pool.

-All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.

-All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.

-Keep pool water out of your mouth.

(3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:

(a) maintain the disinfectant concentration within the range between two mg/l (four mg/l for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five mg/l (10 mg/l for bromine);

- (b) maintain the pH between 7.2 and 7.5; and
- (c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 mg/l.

(4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392-302-33(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient to achieve at least a 99.9 percent destruction or removal of cryptosporidium oocysts twice weekly, except as provided in R392-302-33(4)(b).

(b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 mg/l minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five mg/l. The operator of any public pool not required to have a lifeguard by R392-302-30 (2) shall hyperchlorinate at least once weekly.

(c) A full flow ultraviolet treatment system that meets the requirements of ~~[National Sanitation Foundation]~~ standard NSF/ANSI 50-~~[2007, which is incorporated by reference]~~2015 for ultraviolet light process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(d) An ozone treatment system that achieves a CT value of 7.4 and a flow-through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of ~~[National Sanitation Foundation]~~ standard NSF/ANSI 50-~~[2007, which is incorporated by reference]~~2015 for ozone process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.

(e) A cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:

- (i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-33(4)(a);

- (ii) assure safety for swimmers and pool operators; and
- (iii) comply with all other applicable rules and federal regulations.

TABLE 7  
Chlorine Concentration and Contact Time to Achieve CT = 15,300

Chlorine Concentration	Contact Time
1.0 mg/l	15,300 minutes (255 hours)
10 mg/l	1,530 minutes (25.5 hours)
20 mg/l	765 minutes (12.75 hours)

(5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility.

(6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has rescinded it.

**R392-302-34. Signs.**

(1) Signs required in R392-302 shall be placed to alert and inform patrons in enough time that the patrons may take appropriate actions.

(2) Signs shall be written in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible.

(3) As required in different subsections of this rule, sign lettering shall meet one or more, if stated, of the following minimum size standards:

(a) "4 Inch Safety Sign" shall be written in all capital letters that are at least four inches, 10.2 centimeters in height.

(b) "2 Inch Safety Sign" shall be written in all capital letters that are at least two inches, 5.1 centimeters, in height.

(c) "Rule Signs" shall be written with any required signal word, warning or caution, as the sign heading in letters at least two inches, 5.1 centimeters, in height and the body or bulleted rules in letters at least 1.5 inches, 3.8 centimeters, in height.

(i) If the sign can only be viewed from more than a distance of ten feet, 3.048 meters, the letter height shall be larger in the same proportion as the required viewing distance is to ten feet, 3.048 meters.

(ii) The Local Health Officer may approve smaller letter sizes than those required in R392-302-34(3)(c) if the sign will always be viewed from less than a ten foot, 3.048 meters, distance and if the Local Health Officer agrees that the sign meets the requirements of R392-302-34(1) and (2).

**KEY: pools, spas, ~~water slides,~~ swimming, water**  
**Date of Enactment or Last Substantive Amendment:**  
**~~[November 25, 2015]2017~~**  
**Notice of Continuation: November 7, 2016**  
**Authorizing, and Implemented or Interpreted Law: 26-15-2, 26-1-30, 26-1-5**

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-60-2**  
Definitions

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

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE NO.: 41379  
FILED: 03/20/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify the definition of a "covered outpatient drug".

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies the definition of a "covered outpatient drug".

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment only clarifies a definition. It neither affects prescribed drug services nor drug reimbursement.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because this amendment only clarifies a definition. It neither affects prescribed drug services nor drug reimbursement.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only clarifies a definition. It neither affects prescribed drug services nor drug reimbursement.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid clients and to Medicaid providers because this amendment only clarifies a definition. It neither affects prescribed drug services nor drug reimbursement.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid client or to a Medicaid provider because this amendment only clarifies a definition. It neither affects prescribed drug services nor drug reimbursement.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact on business because the proposed rule does not change any requirements under the existing rule.

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

**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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2017**

**AUTHORIZED BY: Joseph Miner, MD, Executive Director**

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

**R414-60. Medicaid Policy for Pharmacy Program.**

**R414-60-2. Definitions.**

(1) "Covered outpatient drug" means a drug that meets all of the following criteria:

- (a) Requires a prescription for dispensing;
- (b) Has a National Drug Code number;
- (c) Is eligible for Federal Medical Assistance Percentages funds;

(d) Has been approved by the Food and Drug Administration; and

(e) Is listed in the ~~[Medi-Span drug file]~~ nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah, which is outside of Weber County, Davis County, Utah County, and Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" is the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects all advertised savings, discounts, special promotions, or any other program available to the general public.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~[December 1, 2016]~~2017

**Notice of Continuation: April 30, 2012**

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

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-303-4  
Medicaid for Parents and Caretaker  
Relatives, Pregnant Women, Children,  
and Individuals Infected with  
Tuberculosis Using MAGI Methodology**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41429

FILED: 03/31/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this revision is to change the income standard for the Parent and Caretaker Relative (PCR) coverage group to the Federal Poverty Level (FPL), as directed by state law.

**SUMMARY OF THE RULE OR CHANGE:** This amendment changes the income standard for the PCR coverage group to the FPL and sets the new income limit at 55% of the FPL.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 CFR 435.110 and Section 26-1-5 and Section 26-18-3

**MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Removes Section 1902(a)(10)(A)(ii)(XII) of the Social Security Act, published by Government Printing Office, 01/01/2014
- ◆ Removes 42 CFR 435.110, 435.116, 435.118, and 435.139, published by Government Printing Office, 10/01/2012

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** For FY 2018, the Department of Health estimates a cost of \$5,400,000 to the General Fund (\$18,200,000 in total funds) with the addition of 4,000 individuals to the PCR coverage group.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor make eligibility determinations for the Medicaid program.
- ◆ **SMALL BUSINESSES:** To the extent small businesses provide services to Medicaid members, these businesses may see a portion of \$18,200,000 in annual revenue as a result of this change. The exact amount, however, cannot be determined since it will depend on the services needed by Medicaid members.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers may see a portion of \$18,200,000 in annual revenue as a result of this change while Medicaid

members who qualify for PCR coverage will see a portion of this amount in total savings. The exact savings, however, cannot be determined as it will depend on what Medicaid members qualify for and which providers they use.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change can only result in increased revenue to a single Medicaid provider and savings to a Medicaid member.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment may have a fiscal impact on business in that an increase in eligible recipients will increase the amount of services provided by Medicaid providers.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

**R414-303. Coverage Groups.**

**R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women, Children, and Individuals Infected with Tuberculosis Using MAGI Methodology.**

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, and 42 U.S.C. 1396a(a)(10)(A)(ii)(XII). [October 1, 2012 ed., and Section 1902(a)(10)(A)(ii)(XII) of the Social Security Act, effective January 1, 2014, which are adopted and incorporated by reference.] The Department uses the MAGI methodology defined in Section R414-304-5 to determine household composition and countable income for these individuals.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives as required in 42 CFR 435.110, whose countable income is equal to or below 55% of the Federal Poverty Level (FPL). ~~whose countable income determined using the MAGI methodology does not exceed the applicable income standard for the individual's family size. The income standards are as follows:~~

TABLE

Family Size	Income Standard
1	\$438
2	\$544
3	\$678
4	\$797
5	\$912
6	\$1,012
7	\$1,072
8	\$1,132
9	\$1,196
10	\$1,257
11	\$1,320
12	\$1,382
13	\$1,443
14	\$1,505
15	\$1,569
16	\$1,630

~~(4) For a family that exceeds 16 persons, add \$62 to the income standard for each additional family member.]~~

~~([5]4) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the FPL.~~~~[federal poverty level (FPL).]~~

~~([6]5) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.~~

~~([7]6) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116.~~

~~(a) The Department elects the income limit of 139% of the FPL to determine a pregnant woman's eligibility for Medicaid.~~

~~(b) An individual, as defined in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.~~

~~([8]7) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.~~

~~([9]8) The Department provides Medicaid coverage to an individual who is infected with tuberculosis and who does not qualify for a mandatory Medicaid coverage group. The individual's income cannot exceed the amount of earned income an individual, or if married, a couple, can have to qualify for Supplemental Security Income.~~

**KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2016]~~**2017**

**Notice of Continuation:** January 23, 2013

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

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-305-7  
Treatment of Trusts**

**NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 41428  
FILED: 03/31/2017**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to implement a provision of the 21st Century Cures Act that allows individuals to establish their own Special Needs Trust.

**SUMMARY OF THE RULE OR CHANGE:** This amendment implements a provision of the 21st Century Cures Act that allows individuals to establish their own Special Needs Trust.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 U.S.C. 1396p(d)(4)(A) and Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change neither increases nor decreases the number of individuals who may become eligible for Disabled Medicaid.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor make eligibility determinations for the Medicaid program.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change neither increases nor decreases the number of individuals who may become eligible for Disabled Medicaid.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid clients because this change neither increases nor decreases the number of individuals who may become eligible for Disabled Medicaid.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a single Medicaid provider or to a Medicaid client because this change neither increases nor decreases the number of individuals who may become eligible for Disabled Medicaid.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because the changes do not affect Medicaid eligibility or coverage of services by Medicaid providers.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

##### **R414-305. Resources.**

##### **R414-305-7. Treatment of Trusts.**

(1) The eligibility agency shall apply the criteria in ~~[Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed.]~~ 42 U.S.C. 1396a(k), to determine the availability of trusts established before August 11, 1993.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for the individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable or whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of

the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(A) concerning trusts for a Disabled Person under Age 65. These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust that complies with the provisions in Subsection R414-305-7(2) and (4) do not count as available resources.

~~(a) [The individual trust beneficiary must meet the disability criteria found in 42 U.S.C. 1382e(a)(3). The trust must be established and assets transferred to the trust before the disabled individual reaches age 65.~~

~~\_\_\_\_\_ (b) ]~~The trust must be established solely for the benefit of the disabled individual by the individual, a parent, grandparent, legal guardian of the individual, or ~~the~~a court. A trust established by the disabled individual must be established on or after December 13, 2016.

~~([e]b) [The trust may only contain the assets of the disabled individual.]~~The eligibility agency shall treat any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. The additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

~~([d]c)~~ The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

~~([e]d)~~ The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

~~([f]g)~~ The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

~~([g]f)~~ The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

~~([h]g)~~ The eligibility agency shall continue to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the agency shall treat the transfer as a transfer of resources for less than fair market value, which may create a period of ineligibility for certain Medicaid services.

~~([i]h)~~ A trust that provides benefits to other persons is not an individual special needs trust and does not meet the criteria to be excluded from resources.

~~([j]i)~~ A corporate trustee may charge a reasonable fee for services.

([k]j) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

([H]k) Additional trusts cannot be created within the special needs trust.

(3) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(C) concerning pooled trusts for disabled individuals. A pooled trust is a specific trust for disabled individuals that meets all of the following conditions:

(a) The trust contains the assets of disabled individuals;

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents;

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the eligibility agency shall treat the assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated before the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50% of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that the retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust

may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-7(2) and (3):

(a) No expenditures may be made after the death of the beneficiary before repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust;

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share;

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the eligibility agency;

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual;

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary;

(ii) The eligibility agency shall treat any provision or action that does or will divert payments or principal from the annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary;

(e) The eligibility agency shall count cash distributions from the trust as income in the month received;

(f) The eligibility agency shall count retained distributed amounts as resources beginning the month which follows the month that the amounts are distributed. The agency shall apply the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within ten days of receipt. The agency shall exclude assets purchased with trust funds if the trust retains ownership;

(g) The eligibility agency shall count distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid;

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition;

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The eligibility agency may require a statement of medical need for the services from the individual's medical practitioner. If the person who is to

provide the services is a family member or friend, the eligibility agency may require verification of the person's ability to carry out the needed services;

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically necessary attendant;

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the eligibility agency upon request or upon any change of trustee.

(5) The eligibility agency may not count assets held in a pooled trust that comply with the provisions in Subsection R414-305-7(3) and (4) as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community-based services under one of the waiver programs.

**KEY: Medicaid, resources**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2016]~~2017

**Notice of Continuation:** January 23, 2013~~[26-1-5]~~

**Authorizing, and Implemented or Interpreted Law:** ~~26-1-5; 26-18-3~~

**Natural Resources, Administration  
R634-3  
Compensatory Mitigation Program**

**NOTICE OF PROPOSED RULE  
(New Rule)**

DAR FILE NO.: 41410  
FILED: 03/28/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish the Utah Sage-grouse Compensatory Mitigation Program, pursuant to the terms and conditions of Section 79-2-501 et seq.

**SUMMARY OF THE RULE OR CHANGE:** This rule proposes to create a compensatory mitigation program that will help various entities to offset the impacts of development on greater sage-grouse and their habitats. The Department of Natural Resources (DNR) communicated with stakeholders prior to submission of this proposed rule, which is described

as follows. There are seven divisions within DNR including the Utah Division of Wildlife Resources, the Utah Division of Parks and Recreation, the Utah Division of Water Rights, the Utah Division of Water Resources, the Utah Division of Forestry, Fire and State Lands, the Utah Division of Oil, Gas and Mining, and the Utah Geological Survey. Each division has its own process for soliciting and receiving input from stakeholders when proposing changes to administrative rules. DNR itself makes changes to administrative rules very infrequently so DNR does not have a required process for gathering such input. In light of this, the DNR took a proactive and collaborative approach to interacting with various stakeholders and gathering public input during the development of this proposed rule. As a result of those efforts, DNR personnel coordinated numerous meetings with key stakeholders who would be, or could be affected by this proposed rule. By doing so, DNR personnel, along with one designee from the Utah Division of Wildlife Resources and one assigned designee by the Governor's Public Lands Policy Coordinating Office, gathered feedback from stakeholders both before and during the drafting of this proposed rule. This process ensured effective, collaborative, and proactive involvement from various stakeholders prior to the formal administrative rulemaking and public review process. The following is a summary of the organizations and individuals that DNR and its assigned designees met with prior to the submission of this proposed rule: 1) United States Forest Service; 2) United States Bureau of Land Management; 3) United States Natural Resource Conservation Service; 4) Utah Division of Forestry, Fire and State Lands; 5) Utah Division of Oil, Gas and Mining; 6) Utah Department of Transportation; 7) Western Energy Alliance and various members; 8) Utah Petroleum Association and various members; 9) Utah Mining Association and various members; 10) K-COE Isom; 11) QEP Resources; 12) Utah Chukar Foundation; 13) Utah Sage-grouse Plan Implementation Council; 14) Rocky Mountain Power; 15) Nature Conservancy; 16) Utah Farm Bureau; 17) Utah Cattlemen's Association; 18) Uintah Basin Adaptive Resource Management, Local Working Group; and 19) Strawberry Valley Adaptive Resource Management, Local Working Group. Each meeting with the above referenced organizations and individuals was structured around three central topics, including: 1) what items/issues are requested to be included in the proposed rule; 2) what items/issues are requested to be avoided in the proposed rule; and 3) items that need additional clarity or follow-up. This approach framed each discussion fairly and consistently across stakeholder groups and allowed for an effective process for drafting a proposed rule that proactively addressed as many issues as possible. Every good-faith effort has been made to include a summary of every meeting related to this proposed rule. But in light of practical and reasonable limitations, as well as the complexity and scope of this issue, it should be noted that this listing is not exhaustive.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 79-2-501

## ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is anticipated that the revenue needed to administer this program will be recovered by the proceeds created by the implementation of the program. Therefore, this program is expected to be revenue and cost neutral to the state of Utah in the long term.

◆ **LOCAL GOVERNMENTS:** This proposed rule does not require participation by local governments. Local governments that choose to participate in this program will do so voluntarily and will be given an opportunity to evaluate the cost vs. benefit of their participation in this program before doing so.

◆ **SMALL BUSINESSES:** This proposed rule does not require participation by any entity. Therefore, this filing does not create any direct cost or savings impacts to small businesses. Those who choose to participate in this program will do so voluntarily and will be given an opportunity to evaluate the cost vs. benefit of their participation in this program before doing so.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule does not require participation by any entity. Therefore, this filing does not create any direct cost or savings impacts to other persons or entities. Those who choose to participate in this program will do so voluntarily and will be given an opportunity to evaluate the cost vs. benefit of their participation in this program before doing so.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This program does not require participation; therefore, no compliance cost is anticipated. For those who choose to participate in this program, the cost to do so is intended to be advantageous to the organization or individual.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule is intended to be mutually beneficial to businesses; local, state, and federal governmental agencies; and the conservation of greater sage-grouse in Utah.

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

NATURAL RESOURCES  
ADMINISTRATION  
ROOM 3710  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kaelyn Anfinsen by phone at 801-538-7201, by FAX at 801-538-7315, or by Internet E-mail at kaelynanfinsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2017

AUTHORIZED BY: Michael Styler, Executive Director

**R634. Natural Resources, Administration.****R634-3. Compensatory Mitigation Program.****R634-3-1. Authority and Purpose.**

(1) Under authority of Utah State Code Section 79-2-501 et. seq., this rule establishes the State of Utah's Compensatory Mitigation Program, including procedures for implementing the program to mitigate for permanent disturbances to greater sage-grouse (hereafter sage-grouse) habitat in Utah.

(2) This rule incorporates the conservation strategies contained in the "Conservation Plan for Greater Sage-grouse in Utah".

(3) Sage-grouse habitat in Utah is naturally fragmented due to topography, encroachment of conifer trees, fire, and invasive weeds such as cheat grass. Human-related activities have also contributed to habitat fragmentation. Research conducted on sage-grouse in Utah has clearly demonstrated that the species is space-limited and responds positively when new habitat is created. This compensatory mitigation program will be used to increase space (i.e., habitat) for greater sage-grouse and to connect disjointed habitat by creating connections and corridors where they do not exist. Acres of habitat lost and created will be the measure used to guide the implementation and track the success of the program in Utah. Other programs in Utah, including the Watershed Restoration Initiative, Sage-grouse Initiative and the Grazing Improvement Program, conduct projects to improve the quality of the habitat. The lessons learned from those programs will guide the implementation of this rule.

**R634-3-2. Program Goals.**

(1) The Compensatory Mitigation Program seeks to offset the impacts of permanent disturbances to sage-grouse habitat in Utah by

(a) encouraging responsible economic development through avoiding and minimizing permanent disturbance within sage-grouse habitat, when possible, and thereby maintaining the distribution of functional sagebrush habitats within Sage-grouse Management Areas (SGMAs) in Utah; and

(b) providing Compensatory Mitigation resulting in a net conservation gain in functional habitat to offset the direct and indirect impacts from Permanent Disturbance in sage-grouse habitats within Utah.

**R634-3-3. Definitions.**

(1) "Agreement Fee" means a sum of money paid by a Credit Provider upon entering into a Term Mitigation Agreement or Conservation Bank Agreement with the Department to offset the Department's costs in administering the Agreement.

(2) "Application Fee" means a sum of money paid by an applicant to the Department to offset the cost of processing any compensatory mitigation applications submitted to the Department.

(3) "Area of Permanent Disturbance" means the area within a spatial polygon circumscribing the actual permanently disturbed area directly impacting sage-grouse or its habitat, including the area outside the polygon where project effects would be expected to indirectly disturb sage-grouse or its habitat.

(4) "Baseline" means the pre-existing condition of a defined project area, prior to commencing any Credit Generation Project.

(5) "Bank Property" means permanently protected real property included in or devoted to the development of a Conservation Bank.

(6) "Compensatory Mitigation" means the restoration or establishment of sage-grouse habitat to offset the unavoidable adverse impacts which remain following permanent disturbance to sage grouse habitat.

(7) "Compensatory Mitigation Program" means the sage-grouse habitat mitigation program created by Title 79, Chapter 2, Part 5 of the Utah Code and this Rule.

(8) "Conservation Bank" means a site or suite of sites of at least 640 contiguous acres established under a Conservation Bank Agreement with the Department that provides ecological functions and services for sage-grouse, expressed as Credits that are conserved and managed in perpetuity and used to offset impacts to sage-grouse habitat expressed as Debits, occurring elsewhere.

(9) "Conservation Bank Agreement" means the legal document for the establishment, operation and use of a conservation bank.

(10) "Conservation Easement" means a voluntary legal agreement between a landowner and a third party that limits the use or development of land to protect sage-grouse habitat values.

(11) "Corridor" means an area of land that facilitates sage-grouse movement between two or more areas of Occupied Habitat containing less than 1% canopy cover in conifers and at least 15% ground cover in perennial grasses and forbs.

(12) "Credit" means an acre of Functional Habitat or Corridor lands created by a Credit Provider that may be transferred to a Credit Buyer to offset impacts of Permanent Disturbances and which represents the value in Compensatory Mitigation activities.

(13) "Credit Buyer" means any person who purchases Credits to offset the impacts of permanent disturbances to sage-grouse habitat.

(14) "Credit Exchange Service" means a tool created by the Department to track the development, maintenance and transfer of Credits.

(15) "Credit Generation Project" means any planned habitat manipulation project implemented by a Credit Provider or a designee within any SGMA to create or restore Functional Habitat or to create or restore Corridors to generate Credits.

(16) "Credit Maintenance" means the actions required to ensure that Credit acreage continues to operate as Functional Habitat or Corridor lands for the duration of the disturbance it was intended to offset.

(17) "Credit Provider" means any person or entity that creates or restores Functional Habitat or Corridor(s) to generate Credits to be transferred utilizing the Credit Exchange Service.

(18) "Credit Transfer Fee" means a sum of money paid by a Credit Buyer to the Department when a Credit Provider transfers Credits to a Credit Buyer to offset the Department's costs in administering this Program.

(19) "Debit" means an acre of sage-grouse habitat permanently disturbed, either directly or indirectly, in a SGMA for which Compensatory Mitigation is applicable.

(20) "Department" means the Utah Department of Natural Resources, the agency responsible for administering the Compensatory Mitigation Program.

(21) "Durability" means the ability for mitigation measures to remain effective for a period of time that is at least as long as the direct and indirect impacts from the permanent disturbance that the mitigation is designed to offset.

(22) "Functional Habitat" means any sage-grouse habitat, created through a Credit Generation Project, contiguous with existing Occupied Habitat, and which includes a sagebrush canopy cover of at least 15% and no more than 1% canopy cover of conifer trees.

(23) "Habitat" means the aggregation of Seasonal Habitats used by sage-grouse during their yearly life-cycle.

(24) "In-lieu Fee" means money provided from a developer to the State, at the direction of a regulatory agency, to be used for restoration and enhancement of sage-grouse habitat, with the goal to create or restore Functional Habitat that satisfies Compensatory Mitigation requirements to offset Permanent Disturbances on federal or state lands.

(25) "Mitigation Ratio" means the ratio of Credits needed by a Credit Buyer or produced by the State to offset any Permanent Disturbance within sage-grouse habitat to produce a Net Conservation Gain for sage-grouse. Any person causing Permanent Disturbance to an acre of sage-grouse habitat should provide four acres of Functional Habitat or Corridors as a proper Mitigation Ratio.

(26) "Net Conservation Gain" means the actual benefit or gain in habitat quantity above Baseline conditions, as a result of a Credit Generation Project, after deductions for Permanent Disturbance.

(27) "Occupied Habitat" means any Habitat utilized by Sage-grouse during any portion of their lifecycle.

(28) "Permanent Disturbance" means a human caused action that results in a loss of sage-grouse Habitat for a period of five or more years and includes all areas where the direct and indirect effects of the action could be expected to disrupt the common activities of sage-grouse for a period of five years or more.

(29) "Plan" means the Conservation Plan for Greater Sage-grouse in Utah.

(30) "Program Administrator" means the Executive Director of the Department, or their designee, with authority to establish, operate and manage the Compensatory Mitigation Program.

(31) "Project Area" means the geographic boundary of any Credit Generation Project.

(32) "Remedial Action" means any corrective measures which a Credit Provider is required to take to ameliorate any injury or adverse impact to Credits or Transferred Credits to ensure long-term durability of Functional Habitat.

(33) "Reserve Pool" means a pool of Credits, managed by the Program Administrator or a Bank Manager, intended to cover risks of potential Reversals on any Project Area.

(34) "Reversal" means a Compensatory Mitigation Credit that does not persist as Functional Habitat for the full duration of the Permanent Disturbance.

(35) "SGMA" means Sage-grouse Management Areas as identified in the Plan.

(36) "Seasonal Habitat" means all habitats utilized by sage-grouse for survival during some portion of its life cycle, including leks, nesting, brood rearing, late brood rearing, transitional corridors, and winter habitat.

(37) "Service Area" means any SGMA within the State of Utah.

(38) "SITLA Lands" means lands owned or managed by the Utah School and Institutional Trust Lands Administration.

(39) "State Lands" means lands owned or managed by any State of Utah agency other than SITLA.

(40) "Term Mitigation Agreement" means an agreement between the Department and any person(s) owning property adjacent to Occupied Habitat within any SGMA, where the landowner generates Functional Habitat or Corridor(s) for the benefit of sage-grouse, and which actions result in the creation of Credits to be transferred to Credit Buyers to offset Permanent Disturbances to sage-grouse Habitat.

(41) "Transfer" means the conveyance of Credits from one person or entity to another to offset impacts from Permanent Disturbance.

(42) "Transferred Credit" means any Credit transferred from the Department's Credit Exchange Service to offset impacts from Permanent Disturbance.

(43) "Verification" means the process(es) used to confirm that Compensatory Mitigation Program rules have been followed through standardized reporting and monitoring.

(44) "Verifier" means any person or entity who certifies or monitors the existence of Functional Habitat or Corridors following Credit Generation Projects utilizing the scientific methods and guidelines approved by the Department.

#### **R634-3-4. State Sponsored Compensatory Mitigation Program.**

(1) Compensatory Mitigation for Impacts to Private, SITLA and other State Lands.

(a) To ensure a Net Conservation Gain for sage-grouse by creating additional Functional Habitat and Corridors for sage-grouse, the Department will:

(i) Generate four acres of Functional Habitat or Corridors in SGMAs for every one acre of Permanent Disturbance on private or SITLA Lands in any SGMA; and

(ii) For every one acre of Permanent Disturbance on State Lands, other than SITLA lands, in any SGMA, the Department will work with other state agencies to generate four acres of Functional Habitat or Corridors.

(2) Determination of Disturbance.

(a) In consultation with county governments and other state agencies, the Department will determine the number of acres of permanent disturbances within all SGMAs on private, SITLA and State Lands every three years, or whenever information becomes available to the Department.

(3) State Credit Generation Projects.

(a) The Department will identify potential Credit Generation Projects within non-functional habitat in any SGMA. Prior to initiation of any Credit Generation Projects on SITLA, State Lands or federal lands, the Department will assess the Project Area to document the Baseline acres of Functional Habitat present within the Project Area before treatment. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(b) The Department will meet annually with federal agencies with jurisdiction over federal lands to identify potential Credit Generation Projects that may be completed on federal lands utilizing non-federal dollars. Credit Generation Projects will only be initiated after compliance with any necessary federal planning and permitting requirements. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(4) Verification and Tracking of Credits.

(a) Upon completion of any Credit Generation Project on SITLA, State Lands or federal lands, the Department will assess the Project Area utilizing a Verifier to certify the number of Credits generated on the Project Area. Once Credits are certified by the Department, it will track the Credits utilizing the Credit Exchange Service.

(b) Credits generated by the Department will provide a net-conservation gain to sage-grouse by offsetting Permanent Disturbance on private, SITLA and other State Lands. Credits generated by the Department will not be transferred to Credit Buyers except as provided in 3-1-4(G).

(5) Verification; Monitoring and Maintenance.

(a) The Department will monitor the condition of each Credit utilizing the monitoring and assessment guidelines it adopts pursuant to Section 3-1-7(D).

(b) If results from monitoring and assessment demonstrate that Credits produced by the Department no longer provide Functional Habitat or Corridors, then the Department may conduct habitat maintenance projects to restore the Credits, or it may create additional Credits as outlined in Section 3-1-4(F).

(6) Duration, Durability and Reversals. State Assurance.

(a) The Department will ensure that any Credits generated by the Department to offset permanent disturbance in any SGMA will be maintained for the duration of any direct and indirect impacts from Permanent Disturbance on those lands and tracked using the Credit Exchange Service.

(b) In the event of a Reversal to any Credits generated by the Department, the Department will apply additional replacement Credits from other Credit Generation Projects in any SGMA throughout the State. Any actions taken under this Section will be tracked using the Department's Credit Exchange Service.

(7) Federal Agency Use of State Generated Credits.

(a) If a federal agency would like to utilize Credits generated by the State to offset Permanent Disturbance on federal lands, the Department may enter into a written agreement with the federal agency outlining the federal agencies' need and use of Credits to offset Permanent Disturbances on federal lands.

(b) Any federal agency may authorize the use of in-lieu payments from a developer to offset the Department's cost to generate and maintain the Credits. Upon payment of the in-lieu fee to the Department, the federal agency will provide a developer with a written receipt stating that the developer's compensatory mitigation requirements are satisfied and allow a development project to proceed on federal lands.

#### **R634-3-5. Term Mitigation Credit Program.**

(1) Application; Minimum Qualifications. Any person desiring to enter into a Term Mitigation Agreement with the Department to create Credits to mitigate the impacts of disturbances to sage-grouse habitat within Utah, must:

(a) Own, manage and control at least 100 contiguous acres adjacent to Occupied Habitat in any SGMA in Utah identified in the Plan that is not Functional Habitat or a Corridor, but with completion of a Credit Generation Project may become Functional Habitat or a Corridor.

(b) File a completed application with the Department, which, at a minimum, shall include:

(i) name of the owner of the surface and mineral rights on the property;

(ii) legal description of the proposed Project Area and the total number of acres owned by the applicant;

(iii) the number of acres on which Credits will be generated;

(iv) the term of years the person is willing to maintain the Credits on the property, after completing any Credit Generation Project on the property as identified in the Term Mitigation Agreement; and

(v) an Application Fee as outlined in the Fee Schedule attached hereto, as amended by the Department.

(c) Upon receiving any completed application, the Department will make a habitat suitability determination identifying whether the proposed Credit Generation Project will likely result in Functional Habitat or Corridor(s) on the property and identify the number of potential Credits which may result from the creation of Functional Habitat or Corridor(s). In the event another person owns the mineral rights on an applicant property, the Department may request a mineral report for the property.

(d) The Department may deny any application that is incomplete or does not meet the guidelines outlined in this Section.

(2) Establishment of Term Mitigation Agreement.

(a) If the Department determines that an applicant property is suitable for generating Credits, it may enter into a Term Mitigation Agreement with the property owner, identifying, at a minimum:

(i) the scope of work necessary to create and maintain Credits on the Property;

(ii) the entity or person(s) responsible to perform any Credit Generation Projects;

(iii) a management plan identifying maintenance and verification duties for the landowner or a third-party entity;

(iv) the term of the years for Credit Maintenance;

(v) an option clause for renewing the agreement for an additional term of years;

(vi) the legal or financial mechanisms utilized by the landowner to provide assurances to the Department that the Credits generated on the landowner's property will be in place for the duration of the agreement; and

(vii) for split-estate properties, the Department may require the owner of a mineral estate to co-sign the Term Mitigation Agreement and provide a written guarantee that the mineral estate will not be developed during the term of the agreement.

(b) In no event shall the term of a Term Mitigation Agreement be less than twenty (20) years.

(c) Prior to executing the Term Mitigation Agreement, the Department shall collect an Agreement Fee from the person(s) signing the Agreement to offset any costs of administering the Term Mitigation Agreement.

(3) Credit Generation Projects

(a) Prior to initiation of any Credit Generation Project, the Department will assess the Project Area to Verify the number of acres of Functional Habitat or Corridors present on the Project Area before the landowner conducts any Credit Generation Projects.

(b) After conducting any necessary pre-project assessments, a Credit Provider or its designees will complete any Credit Generation Projects as outlined in the Term Mitigation Agreement.

(4) Verification; Tracking of Credits.

(a) Once the Credit Generation Projects are completed, as identified in the Term Mitigation Agreement, a Verifier will inspect the Credit Generation Project area, determine the number of Credits generated on the property, and provide a Certificate of Credits to the landowner identifying the number of Credits available on the property that may be transferred to a Credit Buyer utilizing the Credit Exchange Service.

(b) Upon certifying the Credits, the Department will track the Credits in the Credit Exchange Service identified in Section 3-1-7.

(5) Assessment and Monitoring of Credits.

(a) Credits generated under this Section will be monitored by the Credit Provider and the Department, as outlined in the Term Mitigation Agreement, to ensure that Credits continue to serve as Functional Habitat or Corridors for sage-grouse throughout the duration of the Term Mitigation Agreement.

(b) Credits will be monitored using the Department's Monitoring and Credit Maintenance Policies developed under Section 3-1-7(D). The Program Administrator may utilize monitoring results to amend the Credit maintenance requirements outlined in the Term Mitigation Agreement.

(6) Durability and Assurances.

(a) Prior to the Department listing any Credits on the Credit Exchange Service, the Credit Provider shall provide the Department with financial and/or legal assurances that the Credits developed will be protected for the duration of the Term Mitigation Agreement. Financial assurances may include Letters of Credit, Performance or Guarantee Bonds, Escrow Agreements, endowments or Causality Insurance coverage to offset any losses or reverses to the Credits on the property. Legal assurances may include permanent or term easements, deed restrictions, and contractual guarantees.

(7) Credit Expiration; Renewal of Exchange Agreements.

(a) All Credits generated or transferred under this Section will automatically expire at the end of the term set out in the Term Mitigation Agreement regardless of whether or not the Credit was transferred. Upon expiration of any Credit, the Department will remove the Credit from the Credit Exchange Service.

(b) The Term Mitigation Agreement can be renewed for an additional term as outlined in the agreement. Prior to reissuing the Credits in the Credit Exchange Service, the Department or a Verifier will confirm that the Credits remain as Functional Habitat or Corridors.

(c) In the event any person terminates the Term Mitigation Agreement prior to the terms outlined in the agreement, that person shall pay the Department the state's actual costs to obtain or create replacement Credits to complete the remaining years listed in the agreement.

(8) Federal Agency Use of Term Credits.

(a) Any federal regulatory agency that directs Credit Buyers to purchase Term Credits from the Credit Exchange Service is encouraged to utilize the Mitigation Ratios recommended herein, including mitigating at four acres for every one acre of Permanent Disturbance.

(b) Any federal regulatory agency may place additional requirements on a Credit Buyer for maintaining, monitoring, verifying or providing additional assurances for Credits utilized to offset disturbances to sage-grouse habitat on federal land. The federal agency, or a Credit Buyer will be responsible for any additional monitoring or verification requirements developed by a federal agency.

**R634-3-6. Conservation Banks.**(1) Jurisdiction.

(a) The Department has jurisdiction over the creation and regulation of Conservation Banks for Sage-grouse in Utah. Any person desiring to operate a Conservation Bank and transfer Credits generated by the Conservation Bank must first receive authorization from the Department.

(2) Application; Minimum Qualifications.

(a) Any person desiring to establish a Conservation Bank in Utah to create and protect in perpetuity Functional Habitat and/or Corridors to generate Credits to mitigate for the impacts of Permanent Disturbances to sage-grouse habitat within Utah, must:

(i) own, manage and control at least 640 contiguous acres of land that is not Functional Habitat or Corridor(s) adjacent to Occupied Habitat in any SGMA in Utah, as identified by the Plan;

(ii) file a completed application with the Department, which shall include:

(A) the name and address of property owner;

(B) legal description and number of acres included in the proposed Bank Property;

(C) title search of property identifying current owner(s) and title holder(s) and a list of any existing liens on the property;

(D) name and address of Bank Manager;

(E) a proposed property management plan, including identified Credit Generation Projects and monitoring and maintenance activities to take place on the bank; and

(iii) Pay the applicable Application Fee as outlined in the Fee Schedule attached hereto, as amended by the Department.

(b) The Department may reject any bank application that is incomplete or does not meet the requirements of this Section.

(3) Establishment of Conservation Bank Agreement.

(a) The Department may review any completed application and determine whether the property identified in the application may be eligible to operate as a Conservation Bank.

(b) Upon review and informal approval of the application, the Department will provide a written notice of contingent bank approval to the applicant and shall identify the total number of Credits potentially available on the property upon completion of any Credit Generation Projects.

(c) After the applicant receives the notice of contingent bank approval, the applicant and the Department may enter into a Conservation Bank Agreement which will, at a minimum, identify:

(i) the Bank Manager;

(ii) the legal description of the Bank Property;

(iii) a property management plan identifying any habitat enhancement and maintenance activities to be conducted by Bank Manager to generate Credits on the Bank Property;

(iv) the Bank Manager's monitoring and reporting requirements and schedule;

(v) any Remedial Actions and adaptive management strategies to be taken in case of a Reversal;

(vi) the amount and type of legal or financial assurances the Bank Manager provides for the conservation and maintenance of the Conservation Bank and Credits;

(vii) a means by which the bank or bank property may be transferred to a third party; and

(viii) For split-estate properties, the Department may require a mineral report and written guarantee from the owner(s) of the mineral rights that the minerals will not be developed while the Conservation Bank Agreement is in place.

(d) Prior to executing the Conservation Bank Agreement or transferring Credits on the Credit Exchange Service, the owner of the Conservation Bank shall grant a Conservation Easement to any eligible third-party, a deed restriction, or place the property in an irrevocable trust ensuring the perpetual protection of the property for the benefit of sage-grouse and the protection of sage-grouse habitat.

(e) The Conservation Bank Agreement may be implemented in phases, as needed and appropriate, to generate and sell Credits on a periodic basis, and may be modified or amended by mutual agreement between the Bank and the Department.

(f) The Department shall collect an Agreement Fee from the person(s) signing the Agreement to offset any costs of administering the Term Mitigation Agreement.

(4) Credit Generation Projects.

(a) Prior to initiating any Credit Generation Projects, the Bank Manager or the Department will survey the Project Area to verify the number of acres of existing Functional Habitat or Corridors present and report the survey results to the Department.

(b) Once the Conservation Bank Agreement is fully executed by all parties and the survey results in subsection (1) are reported to the Department, the Bank Manager may begin Credit Generation Projects to generate Credits utilizing the plans and procedures identified in the Conservation Bank Agreement. The Bank Manager shall provide written notification to the Department whenever Credit Generation Projects are completed on the Bank Property.

(5) Verification; Credit Certification and Tracking.

(a) Upon completion of any Credit Generation Projects, as identified in the Conservation Bank Agreement, a Verifier will inspect the Credit Generation Project area to determine the number of acres of Functional Habitat or Corridor that exist on the Bank Property using the scientific methods approved or developed by the Department. When the Verifier determines that Functional Habitat or Corridors exist following Credit Generation Projects, the Verifier will provide a Certificate of Credits to the Bank Manager identifying the number of Credits available on the property to be potentially transferred to a Credit Buyer through the Credit Exchange Service.

(b) Upon Verifying the Credits, the Department will track the Credits on the Credit Exchange Service as identified in Section 3-1-7.

(6) Assessment; Management and Monitoring Duties.

(a) The Bank Manager shall manage the Bank Property in accordance with the management plans prescribed in the Conservation Bank Agreement.

(b) The Bank Manager shall be responsible for monitoring and maintaining the condition of the Credits on the Bank Property and shall collect data as prescribed in the Conservation Bank Agreement, in accordance with the Department's Monitoring and Credit Maintenance policies and procedures.

(c) The Bank Manager or a designee will submit an annual assessment and monitoring report to the Department utilizing the reporting guidelines developed by the Department.

(7) Conservation Bank Agreement Revisions.

(a) The Bank Manager and the Department shall meet and confer upon request of the other to consider revisions to the Conservation Bank Agreement which may be necessary to better conserve the habitat and conservation values of the Bank Property.

(8) Compliance Inspection.

(a) The Department may conduct any necessary assessment, monitoring and verification of the Bank Property to Verify that Credits generated by the Bank qualify as Functional Habitat or Corridor(s); to recommend Remedial Action, as needed; or for any other purpose determined necessary by the Department to assess compliance with the Conservation Bank Agreement.

**R634-3-7. Administration.**

The Compensatory Mitigation Program and associated systems to generate and track Credits shall be administered by the Department.

(1) Credit Exchange Service.

(a) The Department shall monitor and track generated and transferred Credits using the Credit Exchange Service which will include the following information:

(i) Credits. Upon Completion of any Credit Generation Project, the Department will track:

(A) the number of Credits generated under each mitigation system herein;

(B) the dates the Credits were Verified and certified by the Department or a trained Verifier;

(C) the types of Habitat(s) created by the Credit(s), if the information is available;

(D) the name and address of each Credit Provider; and (E) the duration or term for maintaining a Credit.

(ii) Transferred Credits. The Department will track information relating to each Transferred Credit including:

(A) name of Credit Buyer;

(B) the number of Credits transferred to the Credit Buyer;

(C) date of transfer;

(D) duration and term the Credit Expires, if applicable.

(iii) Expiration of Credits. If the term of a Credit or Transferred Credit expires, then the Department will remove the Credit or Transferred Credit from the tracking system, and notify the Buyer of the Credit, the Credit Provider and the involved regulatory agency, if applicable, that the Credit has expired.

(2) Procedure for Transferring Credits.

(a) A Credit Buyer may negotiate the acquisition price for a Credit with any Credit Provider listed on the Credit Exchange Service.

(b) Once an agreement on price is finalized between the Credit Provider and Credit Buyer, the Credit Provider shall notify the Department within 7 days.

(c) Once the Department receives notice of the agreement from a Credit Provider, the Department will send the Credit Buyer an invoice identifying the Credit Transfer Fee to be paid by the Credit Buyer to the Department.

(d) The Credit Buyer shall pay the Credit Transfer Fee to the Department within 30 days of the Department sending the invoice. Upon receipt of the Credit Transfer Fee, the Department will transfer the agreed upon Credits to the Credit Buyer.

(e) The Department shall track Credits transferred to any Credit Buyer using the Credit Exchange Service.

(f) Any Credit Buyer may purchase additional Credits to offset future planned development projects anticipated to cause a Permanent Disturbance to sage-grouse habitat.

(g) Once a Credit Buyer acquires a Transferred Credit, the Transferred Credit may not be transferred or sold to any other person or entity.

(3) Fee Schedule.

(a) The Department will annually develop a fee schedule to cover the cost of the Compensatory Mitigation Program, including:

(i) The Application Fee required to cover the cost of processing any compensatory mitigation applications submitted to the Department from a potential Credit Provider.

(ii) The Agreement Fee, which will outline the costs of administering Term Mitigation Agreements and Conservation Banking Agreements

(iii) The Credit Transfer Fee to be paid by the Credit Buyer to offset the operation and maintenance costs of the Credit Exchange Service.

(4) Verification and Monitoring Guidelines: Certification.

(a) All Credits must be certified by the Department or by a trained Verifier prior to being tracked and transferred on the Credit Exchange Service to ensure that Credits represent Functional Habitat or useable Corridors for sage-grouse.

(b) Upon completion of any Credit Generation Project, the Department, or a Verifier, will visit the Project Area, utilize the Departments monitoring and assessment guidelines to determine the number of acres of Functional Habitat or Corridors of new habitat to calculate available Credits, and provide the Credit Provider with Certificate of Credits identifying the number of Credits available to be transferred on the Credit Exchange Service. The Verifier will also submit a verification report to the to the Program Administrator, together with a copy of the Certificate of Credits. Verifiers may also be utilized by the Department to monitor the long-term viability of Credits.

(c) The Department will accredit any person interested in serving as a Verifier. Accreditation will occur after a person attends a verification training provided by the Department, or a designee, and after a person demonstrates proficiency implementing the Department's monitoring and assessment guidelines.

(d) Verifiers will act as a designee to the Program Administrator to Certify Credits upon completion of any Credit Generation Projects.

(e) Upon completion of any property verification activities, the Verifier will provide a written Verification report to

the Program Administrator identifying a summary of the verification activities, summary of the number of acres of Functional Habitat or Corridors in the Credit Generation Project area and an estimate of the number of Credits available, and a copy of the Certificate of Credits. The Department may add additional criteria to the report needed to carry out this rule.

(5) Monitoring and Assessment Guidelines: Scientific Method.

(a) The Credit Provider, or a designee, is responsible for monitoring and maintaining Credits utilizing the methods identified by the Department throughout the lifetime of the Credit to ensure that each Credit serves as viable Functional Habitat or Corridors for sage-grouse.

(b) The Department, and any trained Verifier, will utilize existing range trend monitoring guidelines or other scientifically approved methods identified by the Department to identify Credit Maintenance activities to be undertaken by a Credit Provider or their designee.

(c) The Department's monitoring and assessment guidelines will be reviewed, at a minimum, every three years to ensure they are consistent with current scientific literature and methods.

(6) Reserve Pool.

(a) All Credits generated by the Department will be maintained on the Credit Exchange Service to serve as a reserve pool to off-set losses from Reversals to any Credits generated under this Program.

(7) Adaptive Management.

(a) The DNR will monitor compensatory mitigation efforts and employ new scientific findings into this Compensatory Mitigation Program, as such information becomes available.

**KEY: sage-grouse, mitigation**

**Date of Enactment or Last Substantive Amendment: 2017  
Authorizing and Implemented or Interpreted Law: 79-2-501**

**Public Safety, Administration  
R698-8  
Local Public Safety and Firefighter  
Surviving Spouse Trust Fund**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41373

FILED: 03/16/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to incorporate changes made by the Trust Fund Board.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to this rule identify a new form type that needs to be submitted when an employer chooses to participate in the

cost sharing agreement, clarify that the annual premium payment must be submitted with the cost sharing agreement, change the date future annual premium payments are due from January 31 to June 30, and remove requirement for notification of change of employment status of a member.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53-17-301(5)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is not an anticipated cost or savings to the state budget because the rule changes only clarify the process for an employer to participate in the cost sharing agreement.

◆ **LOCAL GOVERNMENTS:** There is not an anticipated cost or savings to local government because the rule changes only clarify the process for an employer to participate in the cost sharing agreement.

◆ **SMALL BUSINESSES:** There is not an anticipated cost or savings to the small businesses because the rule changes only clarify the process for an employer to participate in the cost sharing agreement and don't have any impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is not an anticipated cost or savings to the persons other than small businesses, businesses, or local government entities, because the rule changes only clarify the process for an employer to participate in the cost sharing agreement.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is not an anticipated compliance cost for affected persons because the rule changes only clarify the process for an employer to participate in the cost sharing agreement.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule change and find that the amendment will not have a fiscal impact on businesses.

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

PUBLIC SAFETY  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 1ST FLR  
SALT LAKE CITY, UT 84119-5994  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/13/2017**

AUTHORIZED BY: Keith Squires, Commissioner

**R698. Public Safety, Administration.**

**R698-8. Local Public Safety and Firefighter Surviving Spouse Trust Fund.**

**R698-8-1. Purpose.**

The purpose of this rule is to establish procedures for implementation of the Public Safety Officer and Firefighter Line-of-Duty Death Act.

**R698-8-2. Authority.**

This rule is authorized by Section 53-17-301.

**R698-8-3. Definitions.**

(1) The terms used in this rule are defined in Section 53-17-102.

(2) In addition:

(a) "department" means the Utah Department of Public Safety; and

(b) "participating agency" means an employer defined in Section 53-17-102 that has elected to participate in the trust fund.

**R698-8-4. Participation Process.**

(1) An employer that elects to participate in the trust fund shall submit no later than June 30, 2017:

~~(a) a cost sharing agreement form approved by the board [no later than June 30, 2017];~~

~~(b) a certificate of eligible employees form approved by the board that identifies the number of eligible members as of March 31, 2017; and~~

~~(c) the required annual premium payment as determined by the board.~~

(2) The ~~[cost sharing agreement]~~ information described in Subsection R698-8-4(1) shall be addressed to the Commissioner's office of the Department of Public Safety, Attn. Trust Fund, ~~and shall contain the following:~~

~~(3) The cost sharing agreement form shall contain the following:~~

~~(a) the name, address and phone number of the employer; and~~

~~[(b) the name and title of each member to be included for reimbursement from the trust fund;]~~

~~(c) the name, mailing address and signature of the agency administrator completing the cost sharing agreement form[; and].~~

~~[(d) the required annual premium amount as determined by the board.]~~

**R698-8-5. Annual Payment of Premiums.**

(1) A participating agency shall continue to submit annual premium payments to the department in order to continue to participate in the trust fund.

(2) Annual premium payments shall be submitted to the department no later than ~~[January 31st]~~ June 30 of each year and shall be accompanied by an updated certificate of eligible employees form that identifies the number of eligible members as of March 31.

(3) If a participating agency fails to submit a premium payment as required in this subsection, the department shall notify the agency administrator who completed the cost sharing agreement of the delinquency in premium payments.

(4) If after receipt of a delinquency notice the participating agency fails to submit the annual premium payment within 30 days of the date of the notice, the department shall:

(a) notify the agency administrator who completed the cost sharing agreement that the employer is no longer considered to be a participant in the trust fund; and

(b) include in the notice the total amount of premiums paid by the employer into the trust fund.

~~**[R698-8-5. Change of Employment Status of a Member or Agency Administrator.**~~

~~(1) In the event of a change of employment status of a member or the agency administrator, the agency administrator shall submit notice to the department on a form approved by the board.]~~

**R698-8-[6]5. Reimbursement of Health Coverage Costs.**

(1) In the event of a line-of-duty death of a member, a participating agency may receive reimbursement for payment of health coverage premiums and contributions made to a health savings account as described in Section 53-17-201.

(2) To receive reimbursement for payments described in Subsection (1), the participating agency shall submit to the department:

(a) a request for reimbursement on a form approved by the board upon initial request; and

(b) a copy of the statement provided by the group health plan that includes the participating agency's costs for coverage upon initial request and each month thereafter.

(3) The request for reimbursement form shall include:

(a) the name of the spouse for whom coverage is provided; and

(b) the name and date of birth for each child under the age of 26 for whom coverage is provided.

(4) If the member did not have a living spouse at the time of death, the request for reimbursement form shall include the name and date of birth for each child under the age of 26 for whom coverage is provided.

**R698-8-[7]6. Discontinuation of Reimbursement of Health Coverage Costs.**

(1) In the event of the death of a spouse or child for whom coverage is provided under Section 53-17-201, the participating agency shall submit to the department:

(a) a form approved by the board that includes;

(i) the name of the spouse or child that is deceased;

(ii) the individual's date of birth; and

(iii) the date of the individual's death.

(2) Upon receipt of the form described in Subsection (1), the department shall discontinue reimbursement of health coverage costs from the trust fund for the deceased individual.

(3) If reimbursement is being paid from the trust fund for health coverage costs to an employer for a child under the age of 26, reimbursement will be automatically discontinued when the child reaches the age of 26.

**KEY:** line-of-duty death, cost sharing agreement, surviving spouse trust fund

**Date of Enactment or Last Substantive Amendment:** ~~February 24, 2016~~2017

**Authorizing, and Implemented or Interpreted Law:** 53-17-301(5)

## Public Safety, Emergency Management R704-2 Statewide Mutual Aid Act Activation

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41380

FILED: 03/20/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to revise and update language relating to statewide mutual aid as recommended by the Statewide Mutual Aid Committee.

**SUMMARY OF THE RULE OR CHANGE:** Overall this amendment will update and bring the rule into current practices. The previous reference, Section 53-2a-302, is incorrect and should be Section 53-2a-104. This amendment streamlines the statewide mutual aid forms, which are required to be completed by a requesting jurisdiction. The numbering of subsections within the rule have been reformatted. Roles and responsibilities have been redefined; for example, "Deputy Director" is changed to "designee". Spelling errors have been corrected.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53-2a-104(3)

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is not an anticipated cost or savings to the state budget because the revisions proposed by the Statewide Mutual Aid Committee will consolidate several of the statewide mutual aid forms, thereby reducing the amount of waste. Any potential savings will depend on internal function and will be minor.

◆ **LOCAL GOVERNMENTS:** There is not an anticipated cost or savings to local government. These revisions were recommended by representatives from cities, counties, and special service districts on how to more effectively carry out statewide mutual aid. These representatives are members of the Statewide Mutual Aid Committee, and their recommendations will not have adverse affects on local governments. These changes will be advantageous to their operations.

◆ **SMALL BUSINESSES:** There is not an anticipated cost or savings to small businesses because the revisions are net

neutral to small businesses and will have no fiscal effect on them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is not an anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the proposed revisions will not have any effect on persons outside of previously stated groups. No additional taxes or financial burdens will be placed upon communities due to the amendment of this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no costs associated for those who could be affected from compliance with this rule because this rule simply consolidates several of the statewide mutual aid forms and makes minor wording, spelling, and formatting changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this amendment and find that the rule change will not have a fiscal impact on businesses.

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

PUBLIC SAFETY  
EMERGENCY MANAGEMENT  
ROOM 1110 STATE OFFICE BUILDING  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

#### DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
◆ Tara Behunin by phone at 801-538-3426, by FAX at 801-538-3770, or by Internet E-mail at tarabehunin@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/13/2017**

**AUTHORIZED BY:** Kris Hamlet, Director

#### **R704. Public Safety, Emergency Management.**

##### **R704-2. Statewide Mutual Aid Act Activation.**

##### **R704-2-1. Purpose.**

The purpose of this rule is to provide procedures for jurisdictions activating the Statewide Mutual Aid Act (SMAA) and for persons acting as agents of the state to use in mobilizing or demobilizing available assets in response to an intrastate or interstate disaster as provided in Title 53, Chapter 2a, Part [2]4, Emergency Management Assistance Compact.

##### **R704-2-2. Authority.**

This rule is authorized by Section [~~53-2a-302~~]53-2a-104.

**R704-2-3. Definitions.**

(1) Terms used in this rule are defined in Sections 53-2a-102, 53-2a-203, and 53-2a-302.

(2) In addition~~[to the terms defined in Section 53-2a-302]~~:

(a) "agent of the state" means any person designated to represent the state;

(b) "authorized representative" means an officer or employee from a participating jurisdiction empowered to request, offer, or provide assistance on behalf of the chief executive officer;

(c) "committee" means the Statewide Mutual Aid Committee;

(d) "division" means the Utah Division of Emergency Management;

(e) "EMAC" means Emergency Management Assistance Compact, Utah Code Ann. 53-2a-402;

(f) "EMAC coordinator" means a designated division representative functioning as the coordinator of all Emergency Management Assistance Compact activities and actions between the states;

(g) "emergency manager" means a person designated by a jurisdiction to oversee preparedness, emergency or disaster response, mitigation, and recovery for its community;

(h) "Form 101," SMAA Mission Request Form, is a required document used to request resources;

(i) "Form 102A," Agent of the State of Utah - EMAC Agreement, is a required document that outlines liability, benefits, and financial responsibilities when deploying resources to another state;

(j) "Form 102B," Agent of the State of Utah - SMAA Agreement, is a required document that outlines liability, benefits, and financial responsibilities associated with serving as an agent of the state;

(k) "Form 103," SMAA Pre-deployment Checklist for Personnel, is an optional document that lists preparation steps for deployment;

(l) "Form 104," SMAA Mobilization Sheet, is an optional document that outlines the steps and processes involved with deployment;

(m) "Form 105," SMAA Personnel Location, is an optional tracking tool for deployed personnel who are serving an SMAA mission assignment;

(n) "Form 106," SMAA Resource Availability Log, is an optional log that identifies available resources offered by supporting agencies in response to an event;

(o) "Form 107," SMAA Resource Tracking Form, is an optional tracking tool for resources being utilized under an SMAA mission;

(p) "Form 108," SMAA Personnel Demobilization Schedule, is a required tracking tool for personnel being released from their assigned mission duties;

(q) "Form 109," SMAA Demobilization/Return of Assets Guidelines, provides guidelines for the responding jurisdictions to use when tracking assets used in an incident or event;

(r) "Form 110," SMAA Intergovernmental Reimbursement Form, is a required form that a jurisdiction uses to request reimbursement from the requesting jurisdiction;

(s) "Form 111," SMAA After Action/Corrective Action Report Survey, is a form that summarizes and analyzes performance in both exercise and actual events for those who act as an agent of the state. It may also evaluate achievement of the selected exercise objectives and demonstration of the overall capabilities being exercised;

(t) "Form 112," SMAA Demobilization Checklist, is an optional document that outlines the steps to follow in preparing to depart;

(u) "Form 113," SMAA Activation Agreement, is a required document that shows a jurisdiction's intent to activate the SMAA;

(v) "Form 114," SMAA Checklist for Requesting Reimbursement, is a list of the required steps to request reimbursement after the mission is complete;

(w) "Form 115," ~~[SMAA Required Forms and Optional Forms, is a list of forms that are required and forms that are only recommended for use]~~ Resource Expense Summary, is a required document used to track expenditures while an agent of the state;

~~[(x)]~~ "Form 116," SMAA Timeline for Reimbursement, is a document that displays each step of the reimbursement process;

~~[(y)]~~ ~~[(x)]~~ "ICS Form 209," Incident Status Summary, is a form used for reporting information on significant incidents that requires inter-agency or intra-agency resource coordination;

~~[(z)]~~ ~~[(y)]~~ "ICS Form 221," Demobilization Checklist, is a FEMA form for tracking resources as they are released from deployment and return to their responding jurisdiction;

~~[(aa)]~~ ~~[(z)]~~ "jurisdiction" means a participating political subdivision as defined in subsection 53-2a-302(2);

~~[(bb)]~~ ~~[(aa)]~~ "local to local" means assistance between jurisdictions that do not utilize coordination from the state;

~~[(cc)]~~ ~~[(bb)]~~ "mission number" means an assigned number that identifies a mission;

~~[(dd)]~~ ~~[(cc)]~~ "SMAA" means Statewide Mutual Aid Act, Utah Code Ann. 53-2a-301 through 310;

~~[(ee)]~~ ~~[(dd)]~~ "SMAA coordinator" means a designated division representative functioning as the coordinator of Statewide Mutual Aid Act activities and actions between the participating jurisdictions when requesting assistance of the State;

~~[(ff)]~~ ~~[(ee)]~~ "state EOC" means the State of Utah Emergency Operations Center facility operated by the division which assists state agencies and jurisdictions in coordinating information and resources when local emergency response and recovery resources require supplementation; and

~~[(gg)]~~ ~~[(ff)]~~ "state EOC manager" means a person designated to manage the State Emergency Operation Center.

**R704-2-4. Requests for Disaster Assistance in a State of Emergency.**

(1) When seeking to utilize the statewide mutual aid system for an emergency or disaster event, the chief executive officer or emergency manager of the requesting jurisdiction shall contact the division director or ~~[deputy director]~~ designee after they have made a written or oral declaration of emergency pursuant to Sections 53-2a-206 or 53-2a-208.

(a) The chief executive officer or designee of the requesting jurisdiction shall submit Form 101 to the responding jurisdiction within 24 hours of seeking assistance from the system

for state resources or to receive assistance coordinating local to local assistance.

(2) Upon request by the requesting jurisdiction for state assistance, the SMAA coordinator or state EOC manager shall coordinate services and resources for the emergency or disaster event and shall:

- (a) assign a mission number;
- (b) ~~[post information on WebEOC]~~ document information;

and

(c) seek needed equipment and personnel from a participating jurisdiction.

(3) Once a responding jurisdiction that is available to render aid has been identified, the participating jurisdictions shall complete and sign Form 113.

(a) In urgent circumstances, the requesting jurisdiction and the responding jurisdiction may initially enter into a verbal agreement, but the agreement shall be memorialized in writing and signed by both jurisdictions no later than 48 hours after the verbal agreement.

(b) If unanticipated circumstances arise during the emergency or disaster event, the requesting and responding jurisdictions may amend or supplement Form 101.

(c) Any amendments or supplements to Form 101 shall be acknowledged by the participating jurisdictions with authorizing signatures.

#### **R704-2-5. Agent of the State.**

(1) At the request of the division, a jurisdiction may agree to provide an employee with the skills and expertise desired to be deployed as an agent of the state for the purpose of rendering intrastate or interstate aid.

(a) The governing authority of the employee serving as an agent of the state shall submit to the division either Form 102A or Form 102B in response to an intrastate or interstate emergency or disaster.

(b) The responding jurisdiction's employee shall remain an employee of the responding jurisdiction except that the supervision of his or her duties during the period of assignment may be governed by agreement between the responding jurisdiction and the requesting jurisdiction and shall be entitled to the same salary and benefits to which they would otherwise be entitled to from the responding jurisdiction.

(c) The division assumes no responsibility for the responding jurisdiction's employee other than the coordination of their travel arrangements and lodging and per diem expenses, ~~[expect]~~ except in exigent circumstances.

(d) Upon completion of a mission, the agent of the state shall submit a brief summary of the services provided by the responding jurisdiction, Form 110, and Form 115 to the division. The division shall then reimburse the responding jurisdiction for the eligible expenses stated in subsection (c) incurred by the agent of the state.

#### **R704-2-6. Procedures for Providing Mutual Aid.**

(1) When providing assistance pursuant to the SMAA, the requesting jurisdiction shall control and supervise the personnel, equipment, and resources of any responding jurisdiction.

(a) The requesting jurisdiction shall advise supervisory personnel of the responding jurisdiction concerning assignments or mission tasks.

(b) While providing mutual aid, the incident commander or requesting jurisdiction shall:

(i) maintain daily personnel time records, material records, and a log of equipment hours;

(ii) oversee the operation, control, and maintenance of the equipment and other resources furnished by the responding jurisdiction; and

(iii) report work progress to the responding jurisdiction.

(c) The responding jurisdiction shall notify the requesting jurisdiction if the requested resources are donated or loaned.

(d) The responding jurisdiction may recall its personnel subject to providing a minimum of 24 hours advance notice of intent to withdraw personnel or resources from the requesting jurisdiction, unless circumstances make 24 hours advance notice impracticable or unreasonable.

(2) The responding jurisdiction may release personnel or resources for SMAA assistance after it has determined that its remaining resources are adequate to support its own normal operations.

(a) The requesting jurisdiction shall be responsible for providing food and housing for the personnel from the responding jurisdiction, beginning with the time of arrival at the designated location and until departure, unless otherwise indicated in Form 101.

(b) The requesting jurisdiction may request personnel who are self-sustaining, but must specify what resources it is able to provide to the responding jurisdiction.

(3) The requesting jurisdiction is responsible for coordinating communication between its own personnel and the personnel of the responding jurisdiction.

(a) The responding jurisdiction shall furnish equipment to communicate among its respective operating units.

(4) Each participating jurisdiction shall maintain its own equipment in safe and operational condition.

(5) The division shall receive and maintain an inventory of the state and local services, equipment, supplies, personnel, and other resources related to participation in the SMAA.

#### **R704-2-7. Pre-Mobilization of Resources.**

(1) The requesting jurisdiction shall submit Form 101 to the responding jurisdiction to be kept as documentation. The required information includes:

- (a) type of resources requested; and
- (b) quantity of resources requested.

(2) The responding jurisdiction shall confirm the following incident information:

- (a) name of incident;
- (b) location of incident;
- (c) date and time the incident was declared; and
- (d) current time of deployment of resources requested.

(3) The SMAA coordinator or EOC manager shall provide the following to a responding employee acting as an agent of the state:

- (a) situation briefing;
  - (b) pre-deployment checklist; and
  - (c) travel information.
- (4) A requesting jurisdiction shall first use local agency resources prior to requesting resources through SMAA.
- (5) The requesting jurisdiction shall specify a location for a staging area and assign a person to ensure the resources are ready to be released.
- (a) If the requested resources are for equipment, the responding jurisdiction shall confirm its readiness to be deployed.
- (6) The responding jurisdiction shall perform a communications check with all assigned communications equipment, prior to departure, to ensure compatibility with the requesting jurisdiction.

#### **R704-2-8. Mobilization of Resources.**

- (1) Deployed personnel and resources from a responding jurisdiction shall notify the point of contact for both the requesting jurisdiction and the responding jurisdiction of their arrival at the point of assignment or staging area.
- (2) The requesting jurisdiction shall notify the responding jurisdiction if there is a change in assignments or locations for the requested resources.
- (3) The division shall use Form 104 for each deployment of resources if state assistance was requested.
- (4) Deployed personnel may be tracked by using Form 105.
- (a) Deployed resources and available resources may also be tracked for the SMAA through Forms 106 and 107.
- (5) The requesting jurisdiction shall provide a mission briefing to the deployed personnel from the responding jurisdiction.

#### **R704-2-9. Demobilization of Resources.**

- (1) The requesting jurisdiction will be responsible for demobilization.
- (a) After termination of the mission time, the requesting jurisdiction shall release resources and return those resources to the responding jurisdiction according to the terms of Form 104, unless the circumstances of the incident make compliance with the terms impracticable or impossible.
- (b) The requesting jurisdiction shall debrief all personnel assigned to the incident prior to departure. The debriefing shall include:
- (i) confirmation of personnel's travel arrangements; and
  - (ii) review of personnel's responsibilities for demobilization.
- (2) Equipment issued to personnel from a responding jurisdiction shall be returned, and all documentation shall be completed and submitted as required in Form 109.
- (3) Personnel from the responding jurisdiction shall notify the requesting jurisdiction of the safe arrival of the deployed resources upon returning to their home jurisdiction.
- (4) The responding jurisdiction's returning personnel shall complete and submit Form 111 to the division for all SMAA deployments if acting as an agent of the state.

#### **R704-2-10. Reimbursement Procedures for Rendering Mutual Aid.**

- (1) A responding jurisdiction that seeks reimbursement shall provide notice to the requesting jurisdiction within 30 days of the termination of statewide mutual aid assistance.
- (a) The notice of intent should include the following:
- (i) Form 110;
  - (ii) a brief summary of the services provided by the responding jurisdiction; and
  - (iii) contact information for the designated person or financial representative responsible for the request.
- (b) The responding jurisdiction shall reference the assigned mission number when seeking reimbursement from a requesting jurisdiction.
- (c) In addition to the notice of intent to seek reimbursement, the responding jurisdiction shall provide the requesting jurisdiction and the SMAA coordinator, if the state was involved, with a copy of all documents related to deployment and reimbursement, including:
- (i) Form 101 and any amendments or supplements;
  - (ii) Form 110;
  - ~~(iii) [the requesting jurisdiction's acknowledgement of the responding jurisdiction's notice of intent to seek reimbursement using]~~ Form 113;
  - ~~(iv) Form 115;~~
  - ~~[(+)](v)~~ any notices of dispute; and
  - ~~[(+)](vi)~~ any payments made by the requesting jurisdiction in response to the responding jurisdiction's request.
- (2) The requesting jurisdiction shall acknowledge receipt, in writing, of the notice of intent to seek reimbursement from the responding jurisdiction.
- (3) The SMAA coordinator shall record all documents related to deployment and reimbursement from the requesting jurisdiction personnel acting as an agent of the state.
- (a) The SMAA coordinator shall coordinate with both jurisdictions to encourage and facilitate proper reimbursement, if needed.
- (b) The SMAA coordinator may provide reminder notices in anticipation of due dates including the notifications required under Subsections (3) and (4).
- (c) The division may designate a financial representative to monitor and provide guidance to participating jurisdictions concerning reimbursement.
- (4) When the notification requirements of Subsection (3) have been met, the responding jurisdiction may submit a request for reimbursement to the requesting jurisdiction within 60 days of the termination of statewide mutual aid assistance.
- (a) The request for reimbursement shall include a cover letter that summarizes the assistance provided under Form 101.
- (b) The request for reimbursement shall also include the following:
- (i) a comprehensive invoice listing resources provided with the total cost;~~and~~
  - ~~(ii) Form 110;~~
  - ~~(iii) Form 115; and~~

~~[(ii)]~~(iv) supporting documentation including copies of individual invoices, travel claims, vouchers, and other similar items.

(c) The request for reimbursement shall also include a copy of any amendments or supplements to the original Form 101 and accompanied by the itemized costs and respective supporting documents.

(5) The requesting jurisdiction shall reimburse the responding jurisdiction no later than 30 days from the date of receiving the ~~[notice]~~request under Subsection ~~[(+)]~~(4) unless:

(a) either jurisdiction provides written notice to the other jurisdiction that disputes the reimbursement costs, or alleges noncompliance with the applicable procedures and criteria; or

(b) the jurisdictions agree to an extension for reimbursement.

(6) Disputes regarding reimbursement shall first be addressed between the responding jurisdictions and requesting jurisdiction within 30 days after either party provides notice of the dispute.

(a) The jurisdictions shall make a reasonable effort to resolve the dispute during the 30 day period.

(7) If a dispute cannot be resolved by the jurisdictions within 90 days after the notice of dispute, either party may submit the dispute to the committee.

(a) Requests to the committee must be made no later than 30 days after the end of 90-day period described in Subsection (7).

(b) The requesting jurisdiction shall submit the following documents to the committee for review:

(i) Form 110;

(ii) a concise narrative explaining the dispute; and

(iii) the documents listed in Subsections (4)(a) through

(c).

(c) The requesting and responding jurisdictions may submit other supporting evidence that is relevant to the dispute.

(d) The committee has 30 days to schedule the matter for a hearing.

(e) The committee chairperson shall select a quorum of seven committee members to participate in the hearing.

(f) Hearings are designated as informal adjudications pursuant to Utah Code Ann. Section 63G-4-202.

(g) The committee, by majority vote, shall issue a final written decision within 30 days of the hearing that includes findings of fact and its reasons for its decision.

#### **R704-2-11. Waiver of Reimbursement.**

(1) A responding jurisdiction may waive, in writing, any rights to reimbursement under ~~[Sections 53-2-507 and 53-2-508]~~Section 53-2a-308.

(2) Waiver of any reimbursable right shall specify each item waived in order to provide notice to the requesting jurisdiction and the ~~[SMAA coordinator]~~division, if applicable.

(3) Waiver of any reimbursable right shall be delivered to the requesting jurisdiction with a copy delivered to the ~~[SMAA coordinator]~~division, if applicable, no later than 90 days after the termination of statewide mutual aid assistance.

#### **R704-2-12. Reimbursable Expenses.**

(1) The requesting jurisdiction shall reimburse the responding jurisdiction for costs related to deployment pursuant to Form 101.

(a) In order to be eligible for reimbursement, all costs must be documented and sufficiently detailed in Form 101 and include supporting documentation.

(b) A jurisdiction that fails to submit all required reimbursement forms by due dates listed in this rule forfeits its right to reimbursement.

(2) Unless otherwise specified in Form 101, the responding jurisdiction shall continue to compensate its personnel according to its employment policies at the time of the event.

(a) The requesting jurisdiction shall reimburse the responding jurisdiction for agreed upon costs and expenses incurred during the event.

(3) The requesting jurisdiction shall reimburse the responding jurisdiction for use, damage, or loss of any equipment that the responding jurisdiction provided during the event, exercise, or drill.

(a) If practicable and at the request of the responding jurisdiction, the requesting jurisdiction may provide fuels, miscellaneous supplies, and minor repairs.

(4) Unless damage is caused by gross negligence, bad faith, or willful misconduct by the responding jurisdiction, the requesting jurisdiction shall reimburse the responding jurisdiction for all materials and supplies exhausted or damaged during the event.

(a) The parties may agree that the requesting jurisdiction may replace equipment, materials, and supplies with like, kind, and quality as determined by the responding jurisdiction.

**KEY: Statewide Mutual Aid Act, reimbursements**

**Date of Enactment or Last Substantive Amendment:** ~~[September 29,]~~2017

**Authorizing, and Implemented or Interpreted Law:** ~~[53-2a-302]~~53-2a-104(3)

## Transportation, Administration R907-80 Disposition of Surplus Land

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41384

FILED: 03/23/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This new rule is being proposed to give the Department authority and procedures for disposing of land the executive director has declared surplus by three different methods: public sale auction, negotiated sales, and negotiated exchanges. Without this proposed new rule, the Department is without a procedure for selling surplus land by public sale auction. The public sale auction is the Department's preferred method of disposing of its surplus property because it maximizes transparency, opportunities for persons and entities wishing to obtain the Department's

surplus property, fairness and impartiality in the disposal process and it fosters competition, which maximizes the value the Department receives for its property.

**SUMMARY OF THE RULE OR CHANGE:** This proposed new rule establishes procedures the Department may use to: 1) publish notices of proposed sales and exchanges and then advertise to encourage maximum participation in the auctions and maximum transparency for the negotiated sales and exchanges; 2) conduct public sales auctions; 3) conduct negotiated sales; 4) conduct negotiated exchanges; 5) notify holders of first rights of refusal about the sales and provide them opportunities to exercise or waive their right; and 6) conduct closings.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-5-111 and Section 72-5-117 and Section 72-5-404

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department anticipates that this proposed new rule will result in significant aggregate savings for the state budget. The Department anticipates the public sales auctions will result in higher prices for surplus land sales. The additional money gained will go into one of the Department's funding mechanisms and reduce the demand for state funds for new transportation projects. However, the Department is not able to accurately quantify the amount of additional money it will gain from selling surplus land using public sales auctions before it actually starts conducting such sales auctions. The Department is optimistic such will be the outcome over time because public sales auctions are and used as a method of maximizing prices for land by other state agencies throughout the country and in Utah for years.

◆ **LOCAL GOVERNMENTS:** The Department does not anticipate that this new rule will lead to additional costs for local governments. But, the Department cannot reasonably anticipate whether this new rule will lead to any cost savings for local governments before it has been in use for a while. The Department has conducted exchanges of its surplus land for land owned by local governments for years and intends to continue this practice into the foreseeable future. This new rule streamlines the process the Department follows to negotiate land exchanges with local governments, and makes the process more transparent. The Department believes this improved process will lead to savings and other benefits for local governments over time but cannot quantify those gains at this time.

◆ **SMALL BUSINESSES:** The department does not anticipate that this new rule will lead directly to any new costs or savings for the budgets of small businesses. The rule does not require anything of small businesses in the form of fees or burdensome actions. The Department does anticipate that the new rule will provide more opportunities for owners of small businesses to purchase its surplus land if they wish, for whatever purpose they wish. Additional opportunities to purchase the Department's surplus land could lead to opportunities for small business to grow, profit, or create new

jobs. But, the Department is not able to reasonably quantify such opportunities at present.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The department does not anticipate that this new rule will lead directly to any new costs or savings for the budgets of persons other than small businesses, businesses, or local government entities. The rule does not require anything of such persons in the form of fees or burdensome actions. The Department does anticipate that the new rule will provide more opportunities for all interested persons to purchase its surplus land if they wish, for whatever purpose they wish. Additional opportunities to purchase the Department's surplus land could lead to opportunities for persons to profit. But, the Department is not able to reasonably quantify such opportunities at present.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Persons affected by this new rule are those desirous of buying the Department's surplus land. Those persons may be required to pay higher prices for the Department's surplus land than they would without the new rule. The Department is hopeful that benefits such as the additional transparency and opportunities to purchase its surplus land that will result from making this new rule will outweigh any additional purchase price buyers will need to pay.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I do not believe this new rule will have a negative impact on businesses. It may provide businesses additional opportunities to profit.

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)  
◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)  
◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at [lhull@utah.gov](mailto:lhull@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2017**

**AUTHORIZED BY: Carlos Braceras, Executive Director**

**R907. Transportation, Administration.****R907-80. Disposition of Surplus Land.****R907-80-1. Authorities.**

The Department of Transportation makes this rule pursuant to Utah Code sections 72-5-111, 72-5-117, 72-5-404, and 78B-6-521, which authorize the Executive Director to prescribe the terms and conditions for the sale or exchange of surplus right of way, and to make rules to ensure that the value of the real property is consistent with the proposed price and other terms of the purchase, sale, or exchange.

**R907-80-2. Definitions.**

1. "Appraisal" means the same as it is defined in Utah Code section 61-2G-102(1)(a).
2. "Confirmable Delivery Method" means any method of delivering documents that provides a way to confirm they were delivered to the intended party or location.
3. The "Department" means the Utah Department of Transportation.
4. The "Director" means the Executive Director of the Utah Department of Transportation or the Executive Director's designee.
5. "First right of refusal" means the same as "right of first refusal" and "right of first consideration."
6. "Minimum acceptable selling price" means a price established by the Department based upon the market value of the property as established by an appraisal or other means; plus costs associated with preparing the property for and executing the sale, such as the costs of advertising, appraising, performing environmental assessments, and processing the transaction.
7. As used in this rule, "surplus land," "surplus property," or "land" mean an estate in real property to which the Department is the owner and the Director has declared to be surplus.
8. The "Transportation Commission" or "Commission" means the Utah Transportation Commission.
9. A "Utah Public Entity" means a political subdivision of the State, an agency of the state, a county, a municipality, or a special services district of the state, a county, or municipality.

**R907-80-3. Sales or Exchange Initiation Process.**

In determining the appropriateness of a parcel of surplus land for sale or exchange, the Department may consider nominations by interested parties.

**R907-80-4. Sales Deposits.**

Should the Department evaluate a parcel of surplus land for sale or exchange due to a nomination by an interested party, the interested party making such nomination may be required to deposit funds in an amount determined by the Department to be used to offset costs incurred in preparing the parcel for sale. In the event the interested party making the deposit is the successful buyer of such Land, the Department will subtract the deposit amount from the total of the purchase price and fees charged to the buyer for preparing the Land for sale. In the event the person making the deposit is not the successful buyer of such property or the property is not offered for sale, the Department will refund the deposit.

**R907-80-5. Methods of Sale.**

1. The Department may sell Land or assets using one of the methods described below:
  - (a) A public sale auction pursuant to R907-80-7.
  - (b) A negotiated sale pursuant to R907-80-9, or
  - (c) A negotiated exchange pursuant to R907-80-10.
2. The Department will execute sales and exchanges pursuant to rule R933-1-4.

**R907-80-6. Public Sale Notice and Advertising.**

1. At least 14 days prior to a public sale, the Department must send notice by Confirmable Delivery Method to:
  - (a) Persons holding a first right of refusal per Utah Code section 72-5-111, 78B-6-520.3, and 78B-6-521(2)(a); and
  - (b) Lessees and permit holders of record on the subject property.
2. The Department may notify the public about the sale of surplus property by commercially feasible methods, including publication of a notice in one or more newspapers of general circulation in the county in which the sale is proposed at least 30 days before the deadline to submit bids.
3. The notice and any associated advertising will include a general description of the parcel including township, range, and section, and any other information that may create interest in the sale. The Department must also identify the desired form of payment, whether money, in-kind, or both.
4. The Department may advertise public sales using any other methods the Director has determined may increase the potential for additional competition at the sale.

**R907-80-7. Public Sale Auctions.**

The public sale auction is the Department's preferred method of disposing of its surplus property because it maximizes transparency, opportunities for persons and entities wishing to obtain the Department's surplus property, fairness and impartiality in the disposal process and it fosters competition, which maximizes the value the Department receives for its property. Public sale auctions will be conducted as follows:

1. The Comptroller's Office of the Department will accept sealed bids by any means of delivery until 5:00 P.M. the day prior to the auction.
2. The officer conducting the auction will accept sealed bids by personal delivery on the day of the auction up until the beginning of the auction.
3. A sealed bid must contain funds in an amount equal to at least 10% of the total bid amount offered to purchase the subject property and may be required to consist of certified funds. Bids and bid deposits must be a specified dollar amount. The Department has the right to reject any bid however submitted.
4. The Department may require buyers who have defaulted on certificates of sale in the past to make larger deposits or submit sealed bids in the form of certified funds even if such a requirement is not contained in the notice of sale.
5. The officer conducting the auction will open all sealed bids after declaring that the auction has started. After determining which are the highest three bids, the officer will allow the persons

submitting the three highest bids, and bids that are within 20% of the third highest sealed bid, to enter into oral bidding. Oral bids must be for more than the amount of the highest sealed bid, subject to those terms and conditions set forth in R907-80-7(6). Persons who submit sealed bids eligible to participate in the oral bidding will also be allowed to participate by telephone, subject to the terms and conditions of R907-80-7(6).

6. Bids less than the minimum acceptable selling price will be disqualified and the bidder will not be eligible for oral bidding even if such bids would otherwise meet those requirements in R907-80-7(4) or (6).

7. All bids, whether sealed or oral, constitute a valid offer to purchase. An attempt to withdraw a sealed bid after the first sealed bid has been opened, or an attempt to withdraw or amend an oral bid may result in the forfeiture of the bid deposit and any other remedy afforded the Department at law or equity.

8. At the conclusion of the auction and subject to the terms of R907-80-8, the successful bidder must sign a written offer agreement prepared by the Department that states the terms included in the public sale notice.

9. If the successful bidder defaults on the offer agreement, or otherwise fails to meet the requirements of R907-80-11, and upon approval by the Director, the property may be offered for sale to the person whose bid was second highest at the auction provided that the terms of the sale meet or exceed the minimum acceptable selling price established for the subject property. The second highest bidder will have 30 days from the date of the Department's offer to submit the purchase price balance plus costs required by R907-80-9(5).

10. Third parties owning authorized improvements on the parcel at the time of the sale will be allowed 90 days from the date of the sale to remove the improvements. This provision is not applicable when such improvements are permitted under a valid existing right of record when such right survives the sale of the parcel, or the improvements are subject to a separate lease agreement.

#### **R907-80-8. First Right of Refusals.**

1. The Department will notify individuals holding a first right of refusal at the close of the auction about the auction pursuant to Utah Code sections 72-5-111, 78B-6-520.3, 78b-6-521.

2. The Department will notify the holder of a first right of refusal by registered mail of the amount and terms of the highest offer as soon as practicable after the end of a public sales auction. The holder of the first right of refusal will have 90 days after being so notified to inform the Department, in writing, whether the holder agrees to the amount and terms of the highest offer or to waive the right. If the Department does not receive such written notification at the end of 90 days, the Department will consider the right waived.

3. If a holder of a first right of refusal waives the right, the bidder making the highest offer at the close of a public sale auction will enter into a purchase contract with the Department.

4. If a holder of a first right of refusal exercises the right, the holder will enter into a purchase contract with the Department for a price and at terms not lower than the highest offer made at the

close of a public sale auction, and the Department will notify the bidder making the highest offer of the holder's decision to exercise the right.

5. Closings will be executed according to the requirements of R907-80-13.

#### **R907-80-9. Negotiated Sales, Justifications, Procedures, and Public Notice.**

1. The Department may dispose of surplus land by negotiated sale when the Executive Director determines such a sale serves the best interests of the State. The Department may sell surplus land or other property by negotiated sale if:

(a) The buyer is a Utah public entity, and the property is being transferred for a public use, or

(b) The buyer of the surplus land also owns adjoining land.

2. Before the Department may close on a negotiated sale, the Department must publish a Notice of Negotiated Sale. The Notice of Negotiated Sale must include:

(a) A general description of the subject property including the street address and a brief description of the location of the subject property;

(b) Contact information of the Department office where interested parties can obtain more information;

(c) The identity of and contact information for the Utah Public Entity buying the property;

(d) The public purpose for which the Utah Public Entity will use the property; and

(e) The terms of the sale.

3. The Department must publish a Notice of Negotiated Sale on the Department's Internet website, on the Utah Public Notice website, or in a newspaper of general circulation as defined by Utah Code section 45-1-201 for 14 consecutive days before the sale.

4. In the event a party submits a competing offer to purchase the property from the Department, the Department must evaluate the offer and accept the offer that best serves interests of the State. A written justification statement that articulates the reasoning used to determine the offer that best serves the interests of the State must be a part of all negotiated sales files.

5. The Department may require a buyer of surplus land purchased through a negotiated sale to reimburse the Department for costs incurred in preparing the parcel for sale. These costs may include, but are not limited to costs for advertising, appraisal, environmental assessments, and a sale processing charge.

#### **R907-80-10. Negotiated Exchanges.**

1. The Department may exchange real property for other real property with a Utah Public Entity, an individual, business, private enterprise, or not-for-profit organization.

2. The Transportation Commission must approve exchanges made to acquire land the Department needs for highway use.

3. Real property exchange transactions are not subject to competitive solicitation procedures.

4. Exchanges of surplus real property must comply with state law. Exchanges of real property involving the Department and a Utah public entity must follow the requirements of the Interlocal Cooperation Act, Utah Code sections 11-13-101 through 608.

5. The financial consideration received for any real property exchange to an individual, business, private enterprise, or not-for-profit organization must be equal to or higher than the current market value of the Department's real property, as determined by any reasonable means.

6. Real property received in an exchange must be free from all liens, encumbrances, and clouds on title unless the Director determines after review that accepting the property is in the best interests of the State. The Director's justification for accepting property with a lien, encumbrance, or cloud on title must be in writing.

**R907-80-11. Contracts of Sale or Exchange.**

1. The Department will prepare and deliver a contract of sale to the buyer following a public auction sale or upon concurrence of the parties in a negotiated sale or an exchange. This contract must contain the legal description of all subject property or properties, and include:

(a) Information regarding the amount paid or the values of the properties exchanged;

(b) The identities of buyer of the land or the entity or entities participating in the exchange with the Department;

(c) Provisions for remedies the Department may elect in the event of a default; and

(d) Any other terms, covenants, deed restrictions, or conditions that the Department considers appropriate.

2. Buyers or persons participating in a property exchange must execute contracts of sale or exchange and return them to the Department within 20 days from the date the Department delivers the contract. If the Department does not receive the contract within the 20-day period, the Department will send notice by a confirmable delivery method to the buyer or exchanging party giving notice that after 10 days the transaction may be canceled with all monies received by the Department, including any deposit made, will be forfeited to the Department. Notification of this forfeiture provision must accompany the transmittal of the contract.

3. The Director must sign a contract of sale or exchange after the buyer has signed and returned the contract to the Department. The contract may not be final and no rights may vest in the buyer until the Director signs the contract. The Department must reserve the right to cancel a sale or exchange of surplus land for any reason prior to execution of the contract by the Director.

4. A contract of sale or exchange may be assigned to any person qualified to purchase surplus lands, provided that the assignment is approved by the Director, and that no assignment is effective until the Director approves the assignment in writing.

5. An assignment of a contract of sale or exchange must be consistent with these rules, executed by all necessary parties and acknowledged, and must clearly set forth the contract of sale or exchange number, the Land involved, and the name and address of the assignee.

6. Assignment of a contract of sale or exchange does not relieve the assignor from any obligations under the original contract of sale.

7. The Department will issue a quit claim deed to the appropriate person upon payment in full or all amounts owed to the Department and surrender of the original contract of sale or exchange for any tract of land sold or exchanged.

**R907-80-12. Competition Protection.**

1. Collusion between bidders or between a bidder and an employee or agent of the Department to affect a public sale auction is prohibited. Anyone having reason to believe that a public sale auction conducted under this rule may have been affected by collusion between bidders or between one or more bidders and an employee or agent of the Department must report that information to the attorney general as soon as reasonably possible.

2. Should an adjudicative body determine that collusion intended to affect a public sale auction conducted under this rule has occurred, the resulting sale will be voidable by the Department.

**R907-80-13. Closings.**

1. All auction sales, negotiated sales, or negotiated exchanges must go through this closing process.

2. Transactions must be closed within 30 days after the date of the contract unless good cause exists to delay the closing. Information intended to show that good cause that warrants delaying a closing exists must be provided in writing to the Director within 30 days after the date of the contract. The Director must determine if good cause to delay exists.

3. A minimum of 3% security deposit on a negotiated sale will be required to be held in escrow.

4. If closing does not complete within 30 days after the date of the contract, the deposit money becomes non-refundable if the Director decides good cause to delay does not exist.

5. If closing is not complete within the 30 days after the date of the contract and the Director determines that good cause to delay does not exist, the buyer still wishes to buy the property, and the Department agrees to allow the buyer more time to complete the purchase, the buyer must provide an additional 7% security deposit to the Department to be held in escrow and the parties will have an additional 30 days after the date of the contract to close.

6. If the buyer does not provide the additional 7% security deposit required by R907-80-13(5) within 5 business days after the date the Department agrees to allow the buyer more time to complete the purchase, the purchase contract is voidable and the Department may contact the next highest bidder who will then have an opportunity to purchase the property.

7. If closing is not complete within the additional 30 days allowed by R907-80-13(5), all deposit money becomes non-refundable, the contract becomes voidable and the Department may provide the next highest bidder an opportunity to purchase the property.

8. The closing of a real property transaction may be conducted at a title company provided the buyer pays for all related costs. If a title company is used for closing, the Department will instruct the company to record the deed, and after recording, send it to the Department of Transportation, Director of Right of Way.

9. Only the Executive Director is authorized to sign closing papers, real property contracts, or deeds.

10. The Executive Director must approve all property sales or exchanges in writing prior to completion of the closing.

**KEY: surplus land, negotiated exchanges, public sales auctions, negotiated sales**

**Date of Enactment or Last Substantive Amendment: 2017**  
**Authorizing, and Implemented or Interpreted Law: 72-5-117; 72-5-111; 72-5-404**

**Transportation, Operations,  
 Aeronautics  
 R914-3  
 Aircraft Registration Enforcement**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 41421  
 FILED: 03/29/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment deletes Subsection R914-3-4(3) because the Tax Commission does not have authority to levy the penalties presently authorized by Subsection R914-3-4(3). Authority to penalize for aircraft registration violations resides with the Department of Transportation alone.

**SUMMARY OF THE RULE OR CHANGE:** This amendment deletes Subsection R914-3-4(3) from the rule because the Tax Commission does not have authority to levy the penalties presently authorized in Subsection R914-3-4(3). Only the Department of Transportation has authority to penalize for aircraft registration violations.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 72-10-112(3)(b)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Department does not anticipate this amendment will cause any additional costs or savings to the state's budget. The authority to levy penalties, which the rule presently grants to the Tax Commission and which this amendment eliminates, remains with the Department of Transportation pursuant to Section 72-10-112. Any fiscal impact that the rule has on the state's budget will not change due to this amendment.
- ◆ **LOCAL GOVERNMENTS:** The Department does not anticipate this amendment will cause any additional costs or savings to the budgets of local governments. The new rule does not implicate local governments in any way, fiscal or otherwise.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate this amendment will cause any additional costs or savings to the budgets of small business. Only small

businesses that own aircraft that violate the Department's registration requirements will be affected by the rule. Small businesses that violate the Department's registration requirements will be penalized by the Department. The amendment does not change the amount or nature of the penalties the Department may levy for registration violations.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate this amendment will cause any additional costs or savings to the budgets of persons other than small businesses, businesses, or local government entities. Only persons that own aircraft that violate the Department's registration requirements are affected by the rule, and they will be penalized by the Department, not by the Tax Commission. The amendment does not change the amount or nature of the penalties the Department may levy for registration violations.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment will not increase or decrease compliance costs for affected persons. This amendment eliminates a provision in the present rule that provides the Tax Commission authority to levy penalties for violating aircraft registration requirements. The Department of Transportation maintains the authority to levy penalties for violating the registration requirements set forth in the rule. The amount and nature of available penalties do not change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I do not believe this amendment to the proposed rule will have any fiscal impact on business.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 TRANSPORTATION  
 OPERATIONS, AERONAUTICS  
 135 N 2400 W  
 SALT LAKE CITY, UT 84116-2982  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)
- ◆ Jason Davis by phone at 801-965-4895, or by Internet E-mail at [jasondavis@utah.gov](mailto:jasondavis@utah.gov)
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at [lhull@utah.gov](mailto:lhull@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2017**

**AUTHORIZED BY: Carlos Braceras, Executive Director**

**R914. Transportation, Operations, Aeronautics.****R914-3. Aircraft Registration Enforcement.****R914-3-1. Purpose and Authority.**

The purpose of this rule is to provide procedures for the enforcement of state aircraft registration laws and the administration of penalties as required by Utah Code Section 72-10-112.

**R914-3-2. Definitions.**

(1) "Based" means aircraft that is hangared, tied down, or parked at an airport located in the state of Utah for a plurality of the year, which is a total of six months and a day, minimum.

(2) "Tax Commission" means the Utah State Tax Commission.

(3) "Department" means the Utah Department of Transportation, Division of Aeronautics.

**R914-3-3. Procedure for Enforcement.**

(1) Airport operators shall semi-annually, no later than March 1 and September 1, provide to the Department a report containing a list of aircraft Based at the airports they operate. The list shall contain:

(a) The Federal Aviation Administration tail number of each aircraft, and;

(b) The name and address of the owner or owners and the person responsible for payment of the Utah aircraft registration fee, if different.

(2) In addition to the semi-annual reports, airport operators shall coordinate with the Department, or its agent, and provide information as requested by the Department, or its agent, to determine and verify aircraft Based in the state.

(3) The Department, or its agent, shall conduct compliance audits and inspections as needed to enforce applicable state laws related to the registration of aircraft.

(4) In addition to annually submitting to the Tax Commission the statewide database of aircraft Based in the state as required under Section 72-10-110, the Department shall advise the Tax Commission of aircraft Based in the state that were not included in the annual submission.

(5) The Department shall send a Late Notice by certified mail to all aircraft owners who have failed to pay annual registration fees by January 31 each year.

(6) Aircraft owners who fail to pay annual registration fees within 30 days after receiving a Late Notice from the Department shall be penalized as provided by R914-3-4.

**R914-3-4. Notice of Agency Action -- Penalties.**

(1) The Department may commence an adjudicative proceeding pursuant to rule R907-2 to administer a penalty for failure of an owner or owners of an aircraft to register and pay required registration fees for an aircraft Based in the state by serving a Notice of Agency Action upon the owner or owners of the aircraft accused of the violation.

(2) The Department may impose a penalty of 10% of the registration fee for the first month and 5% of the registration fee for each subsequent month an aircraft is operated in violation of Section 72-10-109.

~~(3) In addition to other penalties and as authorized in 72-10-112, the owner or owners of the aircraft may also be subject to penalties levied by the Tax Commission authorized by Section 41-~~

~~1a-1101, providing for seizure of the aircraft, and Section 41-1a-1301, placement of a lien, seizure and sale of the aircraft.]~~

([4]3) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Utah Code Section 63G-4-203.

**R914-3-5. Appeals of Department Action.**

(1) Penalized persons may appeal penalties imposed by the Department under this rule and pursuant to the Notice of Agency Action.

(2) Appeals shall be considered by a steering committee created by the Department. The steering committee shall have the powers granted to the Deputy Director, or the Deputy Director's designee, in R907-1-3 for appeals from failure to pay required aircraft registration fees for aircraft based in the state of Utah.

(3) The committee's decision shall be considered a final agency order pursuant the Administrative Procedures Act.

**KEY: certificate of registration, Utah-based aircraft, aircraft, penalties**

**Date of Enactment or Last Substantive Amendment: [January 18,] 2017**

**Authorizing, and Implemented or Interpreted Law: 72-10-112(3)(b)**

## Workforce Services, Unemployment Insurance **R994-403-202** Qualifying Elements for Approval of Training

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41427

FILED: 03/30/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to change the provision regarding length of training.

**SUMMARY OF THE RULE OR CHANGE:** Federal regulations provide the Department of Workforce Services can approve training if that training will not take more than 24 months to complete. This change brings our rule into compliance with federal regulation.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 35A-4-502(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This is a federally-funded program, so there are no costs or savings to the state budget.

- ◆ LOCAL GOVERNMENTS: This is a federally-funded program, so there are no costs or savings to local government.
- ◆ SMALL BUSINESSES: There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 WORKFORCE SERVICES  
 UNEMPLOYMENT INSURANCE  
 140 E 300 S  
 SALT LAKE CITY, UT 84111-2333  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2017

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2017

AUTHORIZED BY: Suzan Pixton, Legal Counsel

**R994. Workforce Services, Unemployment Insurance.  
 R994-403. Claim for Benefits.**

**R994-403-202. Qualifying Elements for Approval of Training.**

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

- (1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond ~~[+8]~~24 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

**KEY: filing deadlines, registration, student eligibility, unemployment compensation**

**Date of Enactment or Last Substantive Amendment: [August 25, 2016]2017**

**Notice of Continuation: May 16, 2013**

**Authorizing, and Implemented or Interpreted Law: 35A-4-403(1)**

**Workforce Services, Unemployment  
Insurance  
R994-508  
Appeal Procedures**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 41426  
FILED: 03/30/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify procedure and meet new legislative changes.

**SUMMARY OF THE RULE OR CHANGE:** S.B. 224 from the 2017 General Session provides that the Department of Workforce Services can no longer require attorney fees be approved. The Department used to accept collect calls from claimants but now provides a toll free number to call for administrative hearings. To ensure claims are heard in a timely manner, requests to continue a hearing must be made by phone, so a new date can be set immediately.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Section 35A-1-303 and Subsection 35A-1-104(4)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This is a federally-funded program, so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program, so there are no costs or savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program and it is federally funded.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact the contribution rate of any employer.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will

be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
WORKFORCE SERVICES  
UNEMPLOYMENT INSURANCE  
140 E 300 S  
SALT LAKE CITY, UT 84111-2333  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2017**

**AUTHORIZED BY:** Jon Pierpont, Executive Director

**R994. Workforce Services, Unemployment Insurance.  
R994-508. Appeal Procedures.  
R994-508-110. Telephone Hearings.**

(1) Hearings are scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the party that filed the appeal fails to call in advance as required by the notice of hearing, the appeal will be dismissed and an order of default will be issued.

(2) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will ~~[permit collect calls from]~~ provide a toll-free telephone number that parties and their witnesses can call for confirming and participating in telephone hearings~~[- however, professional representatives not at the physical location of their client must pay their own telephone charges].~~

**R994-508-116. Rescheduling or Continuance of Hearing.**

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally ~~[or in writing to the ALJ who is scheduled to hear the case]~~ by calling the Appeals Unit. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of good cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

**R994-508-201. [Attorney]Non-Attorney Representative Fees.**

(1) An ~~[attorney or other]~~ authorized representative who is not an attorney may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers or attorney's fees.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement ~~[unless such a limitation would preclude the claimant from pursuing an appeal to the Court of Appeals and/or the Supreme Court or would deprive the client of the right to representation].~~

**R994-508-203. Criteria for Evaluation of Fee Petition.**

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in;

(a) preparation of the case;

(b) attending the hearing;

(c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs

or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

(a) preparedness of the representative;

(b) organization and presentation of the case;

(c) avoidance of undue delays. A ~~[n-attorney or]~~ representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

**R994-508-204. Appeal of [Attorney's] Fee.**

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

**KEY: unemployment compensation, appellate procedures**

**Date of Enactment or Last Substantive Amendment:** ~~[September 25, 2013]~~ 2017

**Notice of Continuation:** May 16, 2013

**Authorizing, and Implemented or Interpreted Law:** 35A-4-508(2); 35A-4-508(5); 35A-4-508(6); 35A-4-406; 35A-4-103

**End of the Notices of Proposed Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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 help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Administrative Services, Debt Collection **R21-2** Office of State Debt Collection Administrative Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41376  
FILED: 03/17/2017

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of the rule is to establish the form of adjudicative proceeding, provide procedures and standards for the conduct of informal hearings, and provide procedures and standards for orders resulting from the administrative process.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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: It is necessary to continue this rule, so the Office of State Debt Collections can provide procedures and standards to conduct informal hearings, if needed to collect debts.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
DEBT COLLECTION  
ROOM 4130 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at [rbeckstead@utah.gov](mailto:rbeckstead@utah.gov)

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 03/17/2017

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## Administrative Services, Debt Collection **R21-3** Debt Collection Through Administrative Offset

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41377  
FILED: 03/17/2017

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to 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: No 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: It is necessary to continue this rule because it authorizes the Office of State Debt Collection to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 DEBT COLLECTION  
 ROOM 4130 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 03/17/2017

**Environmental Quality, Environmental  
 Response and Remediation  
 R311-200  
 Underground Storage Tanks:  
 Definitions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41394  
 FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste

Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Underground Storage Tank program. It contains important definitions that clarify terms used elsewhere in the UST rules. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ David Wilson by phone at 801-536-4138, or by Internet E-mail at djwilson@utah.gov  
 ♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

**Environmental Quality, Environmental  
 Response and Remediation  
 R311-201  
 Underground Storage Tanks:  
 Certification Programs and UST  
 Operator Training**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41395  
 FILED: 03/27/2017

## 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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for the administration of the petroleum storage tank program and certification of UST installers, inspectors, testers, removers, and consultants. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Subsection 19-6-402(6)(a) of the UST Act refers to education and experience standards established by Board rule for certified UST consultants. Section 19-1-301 of the Environmental Quality Code requires that the Department of Environmental Quality and its boards comply with procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act (APA), and specifies that procedures for an adjudicative proceeding conducted by an administrative law judge are governed by the APA and rules adopted by a board as allowed by Subsection 63G-4-102(6). Section 63G-4-102 of the APA states that the APA governs actions by state agencies that determine or limit legal rights and privileges of persons and governs judicial review of those actions. It allows agencies to enact and follow rules affecting or governing adjudicative proceedings if the rules are enacted according to procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of the APA. Sections 63G-4-201 through 63G-4-205 of the APA allow agencies to enact rules governing certain aspects of adjudicative proceedings, such as commencement of proceedings, designation of categories of proceedings as formal or informal, and procedures for conducting informal and formal proceedings. Section 63G-4-503 of the APA requires an agency to issue rules regarding declaratory orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The division received comments and questions regarding this rule during formal and informal comment periods related to rulemaking. Comments dealt with proposed changes that would allow some types of UST testing to be performed by certified installers or UST owners, add requirements for monthly operator inspections, and change the operator training rules. During rulemaking in 2016, Utah's UST rules were reviewed by representatives from the US Environmental Protection Agency (EPA) to ensure that the changes Utah proposed to incorporate the 2015 EPA UST regulations would not jeopardize Utah's ability to receive State Program Approval (SPA) from EPA. In reviewing the rules, EPA commented that some parts of

Utah's operator training rule may be less stringent than the federal regulations, and made recommendations for changes.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the UST program. As directed by Subsection 19-6-403(1) (a) of the Utah UST Act, the rule provides certification requirements for UST installers, removers, testers, inspectors, and consultants. It also provides for training and registration of UST operators, as required by the Energy Policy Act and Subsection 19-6-403(1)(b) of the UST Act. Therefore, this rule should be continued. The division worked with stakeholders and the UST advisory task force to draft new rules for UST testing that would allow some new required tests to be done by certified UST installers or UST owner/operators. The operator inspection requirement was not changed because it is based on requirements in the federal UST regulations and cannot be more stringent than the federal regulations. The commenter had requested addition of requirements that would be more stringent than the federal regulations. The operator training rules were left intact. Utah is keeping its current operator training program rather than incorporating the new EPA program, and has been assured by EPA that its program will be acceptable for State Program Approval. Questions were answered to the satisfaction of the individuals who posed the questions.

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

ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDICATION  
FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Wilson by phone at 801-536-4138, or by Internet E-mail at [djwilson@utah.gov](mailto:djwilson@utah.gov)
- ◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

Environmental Quality, Environmental  
Response and Remediation  
**R311-202**  
Federal Underground Storage Tank  
Regulations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 41396  
 FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program and the adoption of applicable Federal UST regulations. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During rulemaking in 2016, Utah's UST rules were reviewed by representatives from the US Environmental Protection Agency (EPA) to ensure that the changes Utah proposed to incorporate the 2015 EPA UST regulations would not jeopardize Utah's ability to receive State Program Approval (SPA) from EPA. In reviewing the rules, EPA pointed out an apparent typographical error in the proposed change to Rule R311-202.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for the continued operation of the Underground Storage Tank program. It provides for the incorporation by reference of the federal UST regulations (40 CFR Part 280) and is specifically mandated by Subsection 19-6-403(1)(b) of the Utah UST Act. Therefore, this rule should be continued. The typographical error found during EPA's review was corrected in the proposed rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ David Wilson by phone at 801-536-4138, or by Internet E-mail at [djwilson@utah.gov](mailto:djwilson@utah.gov)  
 ♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

AUTHORIZED BY: Brent Everett, Director  
 EFFECTIVE: 03/27/2017

**Environmental Quality, Environmental Response and Remediation**  
**R311-203**  
**Underground Storage Tanks: Technical Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 41397  
 FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for registration of tanks and administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-408 of the UST Act provides for the assessment of an annual underground storage tank registration fee on regulated USTs. Subsection 19-6-411(2)(b) of the UST Act requires the Board to make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full UST system is installed.

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 division received a comment during rulemaking that questioned whether a proposed change to provide for less frequent inspections by owners/operators of their tank containment sumps (changed from monthly to annual) should be made. During rulemaking in 2016, Utah's UST rules were reviewed by representatives from the US Environmental Protection Agency (EPA) to ensure that the changes Utah proposed to incorporate the 2015 EPA UST regulations would not jeopardize Utah's ability to receive State Program Approval (SPA) from EPA. In reviewing the rules, EPA commented that proposed changes to remove secondary containment requirements that were in place beginning in 2008 should not be removed from the rule because, if removed, UST owners/operators could avoid having to comply with the rule for the time frame it was in place (October 2008 until January 2017). If removed, the Division of Environmental Response and Remediation

(DERR) would not be able to enforce the rule, and that could jeopardize Utah's upcoming SPA. EPA also commented that the rule allowing operator inspections to be conducted less frequently than monthly in a certain situation would be less stringent than the federal regulations and would jeopardize SPA. Comments were received regarding the proposed removal of rule language regarding notification when some alternate fuels are placed in an UST and regarding compatibility of UST equipment with the substance stored. Questions were received regarding proposed changes to Utah's operator inspection form.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the UST program. It clarifies when UST owners/operators and installers must notify on new installations, upgrades, and changes of ownership. It provides for the administration of the registration fee mandated by Section 19-6-408 of the Utah UST Act, the installer permit fees mandated by Section 19-6-411, and the installer notification requirements mandated by Section 19-6-407. It provides clarification of the tank testing requirements in Section 19-6-413 of the UST Act and subparts C (General Operating Requirements) and D (Release Detection) of 40 CFR 280, the federal UST regulations. Therefore, this rule should be continued. The proposed change to make owner/operator inspections of containment sumps annual instead of monthly was enacted because it reflects the operator inspection requirements in the new federal UST regulations, and Utah's UST rules cannot be more stringent than the federal UST regulations. In response to the comments by EPA, the secondary containment rule was kept with additional wording that stated that the rule is effective only from the date of enactment until 01/01/2017, when the secondary containment requirements in the federal UST regulations were adopted. The wording providing for operator inspections less frequently than monthly was removed. New Federal UST requirements for alternate fuels notification and equipment compatibility were incorporated by reference into Utah's UST rules, so the previously existing Utah rule wording was no longer needed and was eliminated. Questions regarding proposed changes to the operator inspection form were answered to the satisfaction of the individuals who posed the questions.

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

ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDICATION  
FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Wilson by phone at 801-536-4138, or by Internet E-mail at djwilson@utah.gov

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

## Environmental Quality, Environmental Response and Remediation

### R311-204

## Underground Storage Tanks: Closure and Remediation

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41398

FILED: 03/27/2017

### 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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-402 of the UST Act provides definitions for terms pertinent to the underground storage tank program, including "Certified underground storage tank consultant", and refers to consultant education and experience standards established by the Board.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Underground Storage Tank program. It specifies the requirements for UST closure plans, specifies labeling requirements and acceptable disposal methods for USTs that have been removed, and specifies when remedial activities may take place without the supervision of a certified UST consultant. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ David Wilson by phone at 801-536-4138, or by Internet E-mail at djwilson@utah.gov  
 ♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

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**Environmental Quality, Environmental  
 Response and Remediation  
 R311-205  
 Underground Storage Tanks: Site  
 Assessment Protocol**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41399  
 FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-413 of the UST Act refers to requirements set by rule for tightness tests performed as part of the application to receive a UST certificate of compliance.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY

DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Underground Storage Tank program. It specifies the requirements for site assessments for UST closures and specifies tank testing and site check requirements for tanks that will be covered by the Petroleum Storage Tank Trust Fund after a period of non-participation. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ David Wilson by phone at 801-536-4138, or by Internet E-mail at djwilson@utah.gov  
 ♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

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**Environmental Quality, Environmental  
 Response and Remediation  
 R311-206  
 Underground Storage Tanks: Certificate  
 of Compliance and Financial Assurance  
 Mechanisms**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41400  
 FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program, including format and required information regarding records to be kept by tank owners/operators who are participating in the Petroleum Storage Tank Trust Fund, and voluntary

participation in the Fund of above-ground petroleum storage tanks and unregulated underground tanks. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Subsection 19-6-410.5(5)(d) required that the Division of Environmental Response and Remediation (DERR), by 01/01/2015, create a risk profile model and rebate schedule for rebates of a percentage of the environmental assurance fee collected from UST owners/operators that participate in the environmental assurance program. Subsection 19-6-411(7)(b) of the UST Act specifies that the Board shall make rules providing for the identification of tanks that qualify for a certificate of compliance. Subsection 19-6-428(3)(b) of the UST Act provides that the Director of DERR may determine, with reasonable cause, that soil/groundwater sampling is not required to establish that no petroleum has been released when an UST owner/operator desires to place an UST facility under Fund coverage after a period of non-participation.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** Comments were received during rulemaking to implement a statutory requirement, Subsection 19-6-410.5(5)(d) of the UST Act, to create a program for rebates of a percentage of the per-gallon environmental surcharge assessed in Utah. Comments dealt with the proposed maximum rebate percentage and risk factors assigned to certain types of USTs.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** The rule is necessary for continued operation of the UST program. It specifies requirements for UST owners and operators participating in the Petroleum Storage Tank Trust Fund and for those who show financial responsibility by other mechanisms. It provides rules for identification of compliant tanks, as mandated by Subsection 19-6-411(7)(b) of the UST Act. It specifies the conditions under which the Director of DERR may determine that there is reasonable cause under Subsection 19-6-428(3)(b) of the UST Act to establish that no sampling is required for sites that will participate in the Fund after a period of non-participation. The rule includes Section R311-206-11, requirements for the environmental assurance fee rebate program mandated by Subsection 19-6-410.5(5)(d) of the UST Act. The maximum rebate percentage is set by statute and cannot be changed in rule. The rationale for the risk factors was discussed with the commenter in the context of the various components of the overall risk level assigned to a UST facility. Therefore, this rule should be continued. No changes were made to the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR

195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ David Wilson by phone at 801-536-4138, or by Internet E-mail at djwilson@utah.gov
- ◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

**Environmental Quality, Environmental  
 Response and Remediation**

**R311-207**

**Accessing the Petroleum Storage Tank  
 Trust Fund for Leaking Petroleum  
 Storage Tanks**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 41401

FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-409 of the UST Act creates the Petroleum Storage Tank (PST) Trust Fund and provides for payment of costs covered by the Fund, including certain costs of UST consultants hired by third parties who have been affected by a release from an UST. Section 19-6-419 of the UST Act specifies costs to be paid by the PST Trust Fund for investigating and cleaning up releases at UST sites, and specifies that the Board shall make rules governing the apportionment of costs among third-party claimants for releases that are covered by the fund.

**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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is an integral part of the PST Trust Fund, and provides the necessary protocol allowing access to fund monies for investigating and cleaning up petroleum releases covered by the fund. It helps maintain the financial viability of the fund to provide a means for UST owners/operators to meet the federally-mandated financial responsibility requirements, and provide reimbursement for expenses associated with covered petroleum releases. It provides necessary requirements to implement Subsection 19-6-409(2)(e) of the UST Act, and provides for payment of certain costs of UST consultants hired by third parties. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Wilson by phone at 801-536-4138, or by Internet E-mail at [djwilson@utah.gov](mailto:djwilson@utah.gov)
- ◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

Environmental Quality, Environmental  
 Response and Remediation  
**R311-208**  
 Underground Storage Tank Penalty  
 Guidance

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41402  
 FILED: 03/27/2017

**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 19-6-403 of the Utah

Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-425 of the UST Act provides for civil penalties for violations of the Act. Section 19-6-416 of the UST Act provides for penalties for deliveries of petroleum to a regulated underground storage tank that is not identified as being properly certified and in compliance.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides guidance to the Director of the Division of Environmental Response and Remediation in imposing and negotiating appropriate penalties against the various degrees of violations. The guidance provides that penalty amounts shall be in accordance with the severity of the violation, risk of harm, and the willingness of individuals to cooperate. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Wilson by phone at 801-536-4138, or by Internet E-mail at [djwilson@utah.gov](mailto:djwilson@utah.gov)
- ◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

Environmental Quality, Environmental  
 Response and Remediation  
**R311-209**  
 Petroleum Storage Tank Cleanup Fund  
 and State Cleanup Appropriation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41403  
FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-405.7 of the UST Act gives the Director of the Division of Environmental Response and Remediation the authority use the Petroleum Storage Tank Cleanup Fund to investigate, abate, or take corrective action regarding releases from USTs that are not covered by the Petroleum Storage Tank Trust Fund. Subsection 19-6-420(10) of the UST Act allows the Director to recover costs incurred for managing and overseeing cleanups of releases not covered by the Petroleum Storage Tank Fund. Section 19-6-424.5 of the UST Act allows the Director to finance cleanup costs that are part of an agreement or order.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is integral to the goals of the UST Act to protect human health and the environment. It provides criteria for use of the Petroleum Storage Tank Cleanup Fund created by Section 19-6-405.7 of the UST Act and the cleanup appropriations made by the legislature. It provides rules for recovery of management and oversight expenses allowed by Subsection 19-6-420(10) of the UST Act. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDICATION  
FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Wilson by phone at 801-536-4138, or by Internet E-mail at djwilson@utah.gov
- ◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

**Environmental Quality, Environmental  
Response and Remediation  
R311-210  
Administrative Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41404  
FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-1-301 of the Environmental Quality Code requires that the Department of Environmental Quality and its boards comply with procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act (APA), and specifies that procedures for an adjudicative proceeding conducted by an administrative law judge are governed by the APA and rules adopted by a board as allowed by Subsection 63G-4-102(6). Sections 63G-4-201 through 63G-4-205 of the APA allow agencies to enact rules governing certain aspects of adjudicative proceedings, such as commencement of proceedings, designation of categories of proceedings as formal or informal, and procedures for conducting informal and formal proceedings. Section 63G-4-503 of the APA requires an agency to issue rules regarding declaratory orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rules regarding administrative procedures for all divisions within the Department of Environmental Quality are found in Rule R305-7. Rule R311-210 contains only one sentence, stating that underground storage tank administrative proceedings are governed by Rule R305-7. Adjudicative rules are necessary to address agency adjudicative needs not addressed in the Administrative Procedures Act, such as delineating the role of a presiding officer, providing a standard of agency review, designating proceedings as formal or informal, and providing specific procedures for involved formal adjudications. Without the rule, it would be difficult or impossible to conduct UST Act adjudications adequately. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ David Wilson by phone at 801-536-4138, or by Internet E-mail at [djwilson@utah.gov](mailto:djwilson@utah.gov)  
 ♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

**Environmental Quality, Environmental  
 Response and Remediation  
 R311-211  
 Corrective Action Cleanup Standards  
 Policy - UST and CERCLA Sites**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41405  
 FILED: 03/27/2017

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-303 of the Hazardous Substance Mitigation Act authorizes the executive director to make rules consistent with the state's responsibilities and involvement with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 19-6-106 of the Solid and Hazardous Waste Act authorizes the Waste Management and Radiation Control Board to make rules under CERCLA, to the extent the Board has jurisdiction.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During rulemaking in 2016, Utah's UST rules were reviewed by representatives from the US Environmental Protection Agency (EPA) to ensure that the changes Utah proposed to incorporate the 2015 EPA UST regulations would not jeopardize Utah's ability to receive State Program Approval (SPA) from EPA. In reviewing the rules, EPA suggested that references to cleanup standards for CERCLA sites should be removed from Rule R311-211, or the rule should state that the CERCLA requirements are outside the scope of the Resource Conservation and Recovery Act (RCRA) program.

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 essential standards to be used in directing corrective action at contaminated UST and CERCLA sites and determining when cleanup is complete. This oversight of cleanup is an essential part of the agency's statutory responsibility. By statutory authority the Division of Environmental Response and Remediation administers both the UST and CERCLA programs. Because of this structure and the common cleanup standards that apply in both programs, it is appropriate, from Utah's perspective, to retain both in the rule. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ David Wilson by phone at 801-536-4138, or by Internet E-mail at [djwilson@utah.gov](mailto:djwilson@utah.gov)

♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

## Environmental Quality, Environmental Response and Remediation

### **R311-212**

## Administration of the Petroleum Storage Tank Loan Program

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41406

FILED: 03/27/2017

### **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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-409 of the UST Act authorizes the Board to make rules for the administration of the Petroleum Storage Tank Loan Program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Petroleum Storage Tank Loan program and is required by statute. The UST Act contains the basic framework of the loan program and mandates that the Board make rules for the program's administration. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDIATION

FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ David Wilson by phone at 801-536-4138, or by Internet E-mail at [djwilson@utah.gov](mailto:djwilson@utah.gov)

♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 03/27/2017

## Governor, Economic Development

### **R357-1**

## Rural Fast Track Program

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41430

FILED: 03/31/2017

### **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 63N-3-104 permits the administrator to make rules governing the following aspects of the Rural Fast Track Program: a) the content of the application form; b) who qualifies as an employee; and c) the verification procedure.

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 has been no written comments received in the past five years, including no comments on the recent repeal and reenactment.

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 agency to run the program's compliance components and allows for the form and intake of applications. This rule needs to continue in order for the agency to be able to run the program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
GOVERNOR  
ECONOMIC DEVELOPMENT  
60 E SOUTH TEMPLE  
THIRD FLOOR

SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

AUTHORIZED BY: Val Hale, Executive Director

EFFECTIVE: 03/31/2017

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**Governor, Economic Development,  
Pete Suazo Utah Athletic Commission  
R359-1  
Pete Suazo Utah Athletic Commission  
Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41425  
FILED: 03/30/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Pete Suazo Athletic Commission adopts this rule under the authority of Subsections 63N-10-102(25)(h), 63N-10-202(1)(b), 63N-10-304(3), 63N-10-308(1), 63N-10-309(1), 63N-10-316(1), and 63N-10-316(2) to enable the Commission to administer Title 63N, Chapter 10, of the Utah Code regarding all administrative elements required by statute including licensing, contracts, physical examinations, weigh-ins, event officials and conduct, safety measures, and all other relevant administration of boxing and mixed martial arts events hosted 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: There has been no comments written and received regarding these rules in 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: The rule is required by statute and provides the current structure for carrying out several statutory duties the Commission is required to fulfill. The rule is needed for the sake of continuity of operations and satisfying statutory requirements. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
GOVERNOR  
ECONOMIC DEVELOPMENT, PETE SUAZO UTAH ATHLETIC COMMISSION  
60 E SOUTH TEMPLE 3RD FLR  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

AUTHORIZED BY: Val Hale, Executive Director

EFFECTIVE: 03/30/2017

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-1A  
Medicaid Policy for Experimental,  
Investigational or Unproven Medical  
Practices**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41423  
FILED: 03/29/2017

**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 26-18-3 requires the Department to implement the Medicaid program through administrative rules, and Section 26-1-5 authorizes the Department to adopt rules that carry out provisions of the Medicaid program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements Medicaid policy for experimental, investigational or unproven medical practices through its reference to Section 1 of the Utah Medicaid Provider Manual and to the Medicaid State Plan.

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 Office 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/29/2017

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-307  
Eligibility for Home and Community-  
Based Services Waivers**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41422  
FILED: 03/29/2017

**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 26-18-3 requires the Department to implement the Medicaid program through administrative rules. In addition, 42 CFR 435.217 specifies who may qualify for home and community-based services (HCBS), and Section 1924 of the Social Security Act sets forth provisions on how to apply income and resources for certain institutionalized spouses.

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 Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it establishes general eligibility requirements for HCBS waivers, sets forth eligibility for institutionalized

individuals and community spouses, and specifies who may become eligible for each HCBS waiver under the Medicaid program.

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 Office 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/29/2017

**Human Services, Juvenile Justice  
Services  
R547-3  
Juvenile Jail Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41385  
FILED: 03/27/2017

**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: In Subsection 62A-7-201(3), it states that the division is responsible for approving short-term juvenile holding facilities in adult jail facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 responsibility, per H.B. 239, is transferred to the Commission on Criminal and Juvenile Justice, effective 05/09/2017. Changes will be forthcoming, but the rule should continue until then since it is necessary to

approve short-term juvenile holding facilities in adult jail facilities.

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

HUMAN SERVICES  
 JUVENILE JUSTICE SERVICES  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov
- ◆ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 03/27/2017

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**Human Services, Juvenile Justice  
 Services  
 R547-6  
 Youth Parole Authority Policies and  
 Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 41386  
 FILED: 03/27/2017

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-7-501 through 62A-7-507 create within the Division a Youth Parole Authority, composed of full and pro-tempore members. The authority will determine parole release, rescission, revocation, and termination of parole for youth offenders committed to secure care within 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: The division continues to be responsible for the operation of the Youth Parole Authority. Therefore, this rule should be continued. Nonsubstantive changes will be made in the near future.

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

HUMAN SERVICES  
 JUVENILE JUSTICE SERVICES  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov
- ◆ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 03/27/2017

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**Human Services, Juvenile Justice  
 Services  
 R547-7  
 Juvenile Holding Room Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 41387  
 FILED: 03/27/2017

**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: In Subsection 62A-7-201(4), it states the division is responsible for approving short-term juvenile holding facilities in local law enforcement agency facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 responsibility, per H.B. 239, is

transferred to the Commission on Criminal and Juvenile Justice, effective 05/09/2017. Changes will be forthcoming, but the rule should continue until then since it is necessary to approve short-term juvenile holding facilities in local law enforcement agency facilities.

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

HUMAN SERVICES  
JUVENILE JUSTICE SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov
- ◆ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 03/27/2017

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**Human Services, Juvenile Justice  
Services  
R547-10  
Ex-Offender Policy**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41388  
FILED: 03/27/2017

**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: Subsections 62A-7-104(8) and 62A-7-104(2)(b) state that the Division has the responsibility to adopt minimum standards for facilities and programs that serve delinquent youth. Subsection 62A-7-104(5) authorizes the Division to employ staff necessary to operate the facilities and programs. Rule R547-10 is the minimum standard established to exclude the hiring of persons with a criminal history to prevent this type of person from working with youth.

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 is a minimum standard designed to prevent adults with a criminal history from working directly with youth offenders. Therefore, this rule should be continued.

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

HUMAN SERVICES  
JUVENILE JUSTICE SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov
- ◆ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 03/27/2017

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**Human Services, Juvenile Justice  
Services  
R547-12**

**Division of Juvenile Justice Services  
Classification of Records**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41389  
FILED: 03/27/2017

**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: In Sections 62A-7-101 et seq. and 63G-2-101 et seq., it states that the division is required to comply with the Government Records Access and Management Act (GRAMA).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: During the five-year review, it was determined that the division will continue to comply with GRAMA regulations. Therefore, this rule should be continued.

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

HUMAN SERVICES  
JUVENILE JUSTICE SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov
- ◆ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 03/27/2017

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to use these guidelines as required to admit youth into secure detention facilities. Therefore, this rule should be continued. Substantive changes are required per H.B. 239 (2017 General Session) by 07/01/2018.

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

HUMAN SERVICES  
JUVENILE JUSTICE SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov
- ◆ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 03/27/2017

**Human Services, Juvenile Justice Services**  
**R547-13**  
**Guidelines for Admission to Secure Youth Detention Facilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41390  
FILED: 03/27/2017

**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: In Subsection 62A-7-104(3)(a) and Section 62A-7-202, it states that the division is responsible to establish and administer statewide guidelines for admission to secure and home detention.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

**Human Services, Juvenile Justice Services**  
**R547-14**  
**Possession of Prohibited Items in Juvenile Detention Facilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41391  
FILED: 03/27/2017

**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: In Section 53-5-710, it states that persons carrying weapons are restricted from established secure areas within detention facilities as outlined in Sections 76-8-311.1, 76-8-311.3, and 76-10-523.5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues the need to restrict weapons in secure areas of juvenile detention facilities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN SERVICES  
 JUVENILE JUSTICE SERVICES  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov  
 ♦ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov  
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 03/27/2017

**Money Management Council,  
 Administration  
 R628-17**

**Limitations on Commercial Paper and  
 Corporate Notes**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41424  
 FILED: 03/30/2017

**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 51-7-18 of the Money Management Act allows the Money Management Council to set up quality criteria for public treasurers when they invest in corporate obligations. This section also allows the Council to make rules regarding the conditions and procedures by which public treasurers may invest public funds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received in the last five years regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides limits on exposure to any one issuer of corporate obligations that are reasonable by basing the limit on the size of the portfolio of the public treasurer. The rule allows for the investment in corporate obligations by public treasurers while maintaining safety of principal when a public treasurer invests in corporate obligations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 MONEY MANAGEMENT COUNCIL  
 ADMINISTRATION  
 ROOM 180 UTAH STATE CAPITOL COMPLEX  
 350 N STATE ST  
 SALT LAKE CITY, UT 84114  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Marina Scott, Chair

EFFECTIVE: 03/30/2017

**Natural Resources, Parks and  
 Recreation  
 R651-102**  
**Government Records Access  
 Management Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41382  
 FILED: 03/23/2017

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule explains where and to whom requests for information shall be directed and provides procedures for accessing the Division of Utah State Parks and Recreation information. This also allows agencies to pass rules in accordance with the Government Records Access Management Act (GRAMA).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Over the last five years, no written

comments have been received either supporting 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: This rule allows for a clean process in handling GRAMA requests and comments. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
PARKS AND RECREATION  
ROOM 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Director

EFFECTIVE: 03/23/2017

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Natural Resources, Parks and  
Recreation  
**R651-301**  
State Recreation Fiscal Assistance  
Programs

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41383  
FILED: 03/23/2017

**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 79-5-301, 79-4-802, and 41-22-19 are sections of code that give the Division of Parks and Recreation authority to administer grants and allows the Division to create and operate grant programs to accomplish specific goals. The code interprets the day-to-day mechanics of administering 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: Over the last five years, no written comments have been received either supporting 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: In each case, Sections 79-5-301, 79-4-802, and 41-22-19 give specific criteria for awarding grant money and creates an easy to understand process for administering them. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
PARKS AND RECREATION  
ROOM 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Director

EFFECTIVE: 03/23/2017

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Natural Resources; Forestry, Fire and  
State Lands  
**R652-1**  
Definition of Terms

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41407  
FILED: 03/28/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Subsection 65A-1-4(2), which authorizes the Division of Forestry, Fire and State Lands to provide definitions which apply to all rules promulgated by the division unless otherwise provided.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule implements Subsection 65A-1-4(2), which authorizes the Division to provide definitions which apply to all rules promulgated by the division. This rule defines certain terms in the Division's rules. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/28/2017

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**Natural Resources; Forestry, Fire and  
State Lands**  
**R652-3**  
**Applicant Qualifications and Application  
Forms**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41408  
FILED: 03/28/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Sections 65A-6-2 and 65A-7-1, which authorize the Division of Forestry, Fire and State Lands to prescribe the applicant requirements and the form of application.

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 division has not received any written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: This rule outlines the applicant qualifications for a lease or permit. This rule also designates division forms for the application process and application processing procedure. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/28/2017

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**Natural Resources; Forestry, Fire and  
State Lands**  
**R652-4**  
**Application Fees and Assessments**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41409  
FILED: 03/28/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Subsection 65A-1-4(2), which authorizes the Division of Forestry, Fire and State Lands to adopt rules necessary to fulfill the purposes of Title 65A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows for the creation of the Division's fees and assessments and informs that a copy of the fee schedule is available at the Division offices. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/28/2017

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and State Lands**  
**R652-5**  
**Payments, Royalties, Audits, and Reinstatements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41411  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Subsection 65A-1-4(2) which authorizes the Division of Forestry, Fire, and State Lands to adopt rules necessary to fulfill the purposes of Title 65A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rules outlines criteria with regard to payments that the Division receives on leases and agreements, establishes royalty reports and reporting periods, specifies the Division's right to audit, and sets forth reinstatement criteria for certain leases that the Division administers. Therefore, this rule should be continued.

**Natural Resources; Forestry, Fire and State Lands**  
**R652-6**  
**Government Records Access and Management**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41412  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule provides procedures for appropriate access to division records, which is authorized by Sections 63G-2-204, 63G-2-603, 63A-12-104, 65A-1-10, and 65A-6-7.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides procedures for appropriate access to division records through the GRAMA process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS

1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and  
State Lands  
R652-20  
Mineral Resources**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41413  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Section 65A-6-2, which authorizes the Division of Forestry, Fire, and State Lands to establish rules for the issuance of mineral leases and management of state-owned lands and mineral resources.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines the requirements for the issuance of mineral leases and management of state-owned lands and mineral resources. The rule further outlines lease rentals and royalties, along with acreage limitations, lease provisions, the simultaneous offering process, and other provisions relating to mineral leasing management. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520

SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and  
State Lands  
R652-30  
Special Use Leases**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41414  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Section 65A-7-1, which authorizes the Division of Forestry, Fire, and State Lands to prescribe standards and conditions for the leasing and development of surface resources on state lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the provisions under which the Division may issue special lease uses on sovereign lands. This includes lease rates, assignment of leases, lease amendments, and other provisions necessary for the management of surface leasing. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and State Lands  
R652-40  
Easements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41415  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Section 65A-7-8, which authorizes the Division of Forestry, Fire, and State Lands to establish rules for the issuance of easements on, through, and over any sovereign land, and to establish price schedules for this use.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the provision through which the Division can issue easements on, through, and over sovereign land. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and State Lands  
R652-50  
Range Management**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41416  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Section 65A-9-2, which authorizes the Division of Forestry, Fire, and State Lands to establish rules prescribing standards and conditions for the utilization of forage and related development of range resources on sovereign lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the provisions under which the Division can issue grazing permits. This rule also sets forth requirements for range improvements projects and the trailing of livestock across sovereign lands. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and  
State Lands  
R652-60**

**Cultural Resources**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41417  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Subsection 65A-2-2(1), which authorizes the Division of Forestry, Fire, and State Lands to prescribe the management of cultural resources on sovereign lands. This rule outlines the manner by which the division shall, pursuant to Section 9-8-404, take into account the effect of sovereign land uses on any district, site, building, structure, or specimen that is included in or eligible for inclusion in the State Register or National Register of Historic Places and allow the State Historic Preservation Officer a reasonable opportunity to comment with regard to the undertaking.

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 Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the manner by which the division shall, pursuant to Section 9-8-404, take into account the effect of sovereign land uses on any district, site, building, structure, or specimen that is included in or eligible for inclusion in the State Register or National Register of Historic Places and allow the State Historic Preservation Officer a reasonable opportunity to comment with regard to the undertaking. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at [jamiiebarnes@utah.gov](mailto:jamiiebarnes@utah.gov)

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and  
State Lands  
R652-70**

**Sovereign Lands**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41418  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Article XX of the Utah Constitution and Section 65A-10-1, which establish the Division of Forestry, Fire, and State Lands and the management authority for sovereign lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, the Bear River from the Amalga Bridge to the Great Salt lake, the summer channel of the Bear River from the Utah-Idaho border to the Amalga Bridge, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams or portions thereof be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands, and the procedures and fees necessary to obtain these rights of use. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and State Lands**  
**R652-90**  
**Sovereign Land Management Planning**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41419  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Sections 65A-2-2 and 65A-2-4, which require that planning procedures be developed for sovereign lands and for the opportunity for the public to participate in the planning process.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the planning procedures for natural and cultural resources on sovereign land as required by law and for the opportunity for the public to participate in the planning process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

**Natural Resources; Forestry, Fire and State Lands**  
**R652-100**  
**Materials Permits**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41420  
FILED: 03/29/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements Section 65A-7-1, which authorizes the Division of Forestry, Fire, and State Lands to prescribe division objectives, standards, and conditions for the issuance of materials permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on sovereign lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments with regard to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the objectives, standards, and conditions under which the Division may issue materials permits or conveyances for common varieties of sand, gravel, cinders, and similar materials on sovereign lands. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 03/29/2017

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 03/27/2017

Public Service Commission,  
Administration  
**R746-420**

Requests for Approval of a Solicitation  
Process

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41393  
FILED: 03/27/2017

**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 54-17-202 requires the commission to establish the requirements for a solicitation process by which an affected utility constructs or acquires a significant energy resource pursuant to the Utah Energy Resource Procurement Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received 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: Rule R746-420 establishes the procedural and informational requirements for a solicitation process by which an affected utility constructs or acquires a significant energy resource pursuant to the Utah Energy Resource Procurement Act. Rule R746-420 continues to be necessary because Section 54-17-200 remains in force. 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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@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

Public Service Commission,  
Administration  
**R746-430**

Procedural and Informational  
Requirements for Action Plans, for an  
Approval of a Significant Energy  
Resource, for Determination of  
Whether to Proceed, and for Waivers of  
a Solicitation Process or of an Approval  
of a Significant Energy Resource

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41392  
FILED: 03/27/2017

**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 54-17-301 through 54-17-304 require the commission to establish the procedural and informational requirements for review of a utility's action plan for approval of a significant energy resource decision and, when seeking an order, to proceed with an approved significant energy resource decision pursuant to the Energy Resource Procurement Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received 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: Rule R746-430 establishes the procedural and informational requirements for review of a utility's action plan for approval of a significant energy resource decision and, when seeking an order, to proceed with an approved significant energy resource decision pursuant to the Energy Resource Procurement Act. Rule R746-430 continues to be necessary because Sections 54-17-301 through 54-17-304 remain in force. 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@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: Melanie Reif, Legal Counsel

EFFECTIVE: 03/27/2017

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**Transportation, Program Development**  
**R926-4**  
**Establishing and Defining a Functional Classification of Highways in the State of Utah**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41375  
FILED: 03/17/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by and

enacted under the authority of Subsection 72-4-102.5(7) and establishes the procedure and criteria the Department must use to functionally classify highways.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue in order to keep in place the procedure and criteria by which highways are functionally classified.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
PROGRAM DEVELOPMENT  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov  
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov  
♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 03/17/2017

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative 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 make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the 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.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Commerce

#### Occupational and Professional Licensing

No. 41260 (AMD): R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule

Published: 02/15/2017

Effective: 03/27/2017

No. 41261 (AMD): R156-55b-102. Definitions

Published: 02/15/2017

Effective: 03/27/2017

### Environmental Quality

#### Water Quality

No. 40995 (AMD): R317-1. Definitions and General Requirements

Published: 12/01/2016

Effective: 03/27/2017

No. 40995 (CPR): R317-1. Definitions and General Requirements

Published: 02/15/2017

Effective: 03/27/2017

### Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 41174 (AMD): R414-60. Medicaid Policy for Pharmacy Program

Published: 02/01/2017

Effective: 04/01/2017

No. 41175 (AMD): R414-60A-2. DUR Board Composition and Membership Requirements

Published: 02/01/2017

Effective: 04/01/2017

No. 41211 (AMD): R414-304. Income and Budgeting

Published: 02/15/2017

Effective: 03/28/2017

No. 41212 (AMD): R414-308-7. Change Reporting and Benefit Changes

Published: 02/15/2017

Effective: 03/28/2017

No. 41213 (AMD): R414-310-13. Change Reporting and Benefit Changes

Published: 02/15/2017

Effective: 03/28/2017

### Human Services

#### Administration, Administrative Services, Licensing

No. 41173 (AMD): R501-14. Human Service Program Background Screening

Published: 02/01/2017

Effective: 03/21/2017

No. 40930 (R&R): R501-21. Outpatient Treatment Programs

Published: 11/15/2016

Effective: 03/24/2017

No. 40930 (CPR): R501-21. Outpatient Treatment Programs

Published: 02/15/2017

Effective: 03/24/2017

### Insurance

#### Administration

No. 41259 (AMD): R590-102. Insurance Department Fee Payment Rule

Published: 02/15/2017

Effective: 03/24/2017

NOTICES OF RULE EFFECTIVE DATES

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Public Safety

Driver License

No. 41200 (REP): R708-25. Commercial Driver License

Applicant Fitness Certification

Published: 02/15/2017

Effective: 03/27/2017

Public Service Commission

Administration

No. 41031 (CPR): R746-341. Lifeline Rule

Published: 02/15/2017

Effective: 03/24/2017

No. 41031 (AMD): R746-341. Lifeline Rule

Published: 12/15/2016

Effective: 03/24/2017

Science Technology and Research Governing Auth.  
Administration

No. 41095 (NEW): R856-4. USTAR Science Technology  
Initiation Grant

Published: 01/01/2017

Effective: 03/22/2017

No. 41096 (NEW): R856-5. USTAR Energy Research  
Triangle Professors Grant

Published: 01/01/2017

Effective: 03/22/2017

No. 41097 (NEW): R856-6. USTAR Energy Research  
Triangle Scholars Grant

Published: 01/01/2017

Effective: 03/22/2017

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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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, 2017 through March 31, 2017. 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 the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

<p>AMD = Amendment (Proposed Rule)                  CPR = Change in Proposed Rule                  EMR = 120-Day (Emergency) Rule                  EXD = Expired Rule                  EXP = Expedited Rule                  EXT = Five-Year Review Extension                  GEX = Governor's Extension</p>	<p>LNR = Legislative Nonreauthorization                  NEW = New Rule (Proposed Rule)                  NSC = Nonsubstantive Rule Change                  R&amp;R = Repeal and Reenact (Proposed Rule)                  REP = Repeal (Proposed Rule)                  5YR = Five-Year Notice of Review and                  Statement of Continuation</p>
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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Debt Collection</u>					
R21-2	Office of State Debt Collection Administrative Procedures	41376	5YR	03/17/2017	Not Printed
R21-3	Debt Collection Through Administrative Offset	41377	5YR	03/17/2017	Not Printed
<u>Facilities Construction and Management</u>					
R23-1	Procurement Rules with Numbering Related to the Procurement Code	41266	5YR	02/01/2017	2017-4/57
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting	40947	AMD	01/20/2017	2016-23/6
R23-19	Facility Use Rules	41267	5YR	02/01/2017	2017-4/57
R23-20	Free Speech Activities	41268	5YR	02/01/2017	2017-4/58
R23-30	State Facility Energy Efficiency Fund	40946	AMD	01/20/2017	2016-23/11
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	41127	EMR	01/06/2017	2017-3/71
R25-7	Travel-Related Reimbursements for State Employees	41147	AMD	03/10/2017	2017-3/2
R25-14	Payment of Attorney's Fees in Death Penalty Cases	41124	5YR	01/06/2017	2017-3/79
R25-20	Indigent Defense Funds Board, Procedures for Electronic Meetings	41327	5YR	02/21/2017	2017-6/29
<u>Fleet Operations</u>					
R27-1	Definitions	41105	AMD	02/21/2017	2017-2/4
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R33-8-102	Adding Additional Funds to a Contract	41023	AMD	02/02/2017	2016-24/4
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R156-31b-502	Unprofessional Conduct	41308	NSC	03/06/2017	Not Printed
R156-31b-703b	Scope of Nursing Practice Implementation	41113	NSC	01/18/2017	Not Printed
R156-37	Utah Controlled Substances Act Rule	41289	5YR	02/06/2017	2017-5/61

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R156-46b-202	Informal Adjudicative Proceedings	41169	AMD	03/13/2017	2017-3/8
R156-55b-102	Definitions	41261	AMD	03/27/2017	2017-4/5
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R277-517	LEA Codes of Conduct	41008	NEW	01/10/2017	2016-23/41
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R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	41395	5YR	03/27/2017	Not Printed
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R311-207	Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	41401	5YR	03/27/2017	Not Printed
R311-208	Underground Storage Tank Penalty Guidance	41402	5YR	03/27/2017	Not Printed
R311-209	Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation	41403	5YR	03/27/2017	Not Printed
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R357-19	Business Resource Centers	40961	NEW	02/22/2017	2016-23/55
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R380-77	Coordination of Patient Identification and Validation Services	41055	NSC	02/01/2017	Not Printed
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R392-510	Utah Indoor Clean Air Act	41368	5YR	03/15/2017	2017-7/84
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R438-10	Rules for Establishment of a Procedure to Examine the Blood of All Adult Pedestrians and All Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom	40868	REP	01/11/2017	2016-21/46
R438-12	Rule for Law Enforcement Blood Draws	41119	EXT	01/03/2017	2017-2/47
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R432-40	Long-Term Care Facility Immunizations	41309	5YR	02/13/2017	2017-5/66
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R432-151	Mental Disease Facility	41312	5YR	02/13/2017	2017-5/67
R432-152	Mental Retardation Facility	41313	5YR	02/13/2017	2017-5/68
R432-201	Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule	41314	5YR	02/13/2017	2017-5/68
R432-270	Assisted Living Facilities	41056	AMD	02/13/2017	2017-1/74
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R414-21	Physical Therapy and Occupational Therapy	41126	5YR	01/06/2017	2017-3/94
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R414-302-6	Residents of Institutions	41070	AMD	02/15/2017	2017-1/72
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R414-304-5	MAGI-Based Coverage Groups	40998	AMD	01/17/2017	2016-23/63
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R414-308-7	Change Reporting and Benefit Changes	41212	AMD	03/28/2017	2017-4/26
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R477-6	Compensation	41276	EXT	02/02/2017	2017-5/76
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R501-14	Human Service Program Background Screening	41173	AMD	03/21/2017	2017-3/28
R501-21	Outpatient Treatment Programs	40930	R&R	03/24/2017	2016-22/83
R501-21	Outpatient Treatment Programs	40930	CPR	03/24/2017	2017-4/49

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R547-6	Youth Parole Authority Policies and Procedures	41386	5YR	03/27/2017	Not Printed
R547-7	Juvenile Holding Room Standards	41387	5YR	03/27/2017	Not Printed
R547-10	Ex-Offender Policy	41388	5YR	03/27/2017	Not Printed
R547-12	Division of Juvenile Justice Services Classification of Records	41389	5YR	03/27/2017	Not Printed
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R547-14	Possession of Prohibited Items in Juvenile Detention Facilities	41391	5YR	03/27/2017	Not Printed

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R926-13-4	Highways Within the State That Are Designated as State Scenic Byways	41053	AMD	02/07/2017	2017-1/95
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(THC)

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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)  
 CPR = Change in Proposed Rule  
 EMR = 120-Day (Emergency) Rule  
 EXD = Expired Rule  
 EXP = Expedited Rule  
 EXT = Five-Year Review Extension  
 GEX = Governor's Extension  
 LNR = Legislative Nonreauthorization  
 NEW = New Rule (Proposed Rule)  
 NSC = Nonsubstantive Rule Change  
 R&R = Repeal and Reenact (Proposed Rule)  
 REP = Repeal (Proposed Rule)  
 5YR = Five-Year Notice of Review and  
 Statement of Continuation

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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<u>action plan</u> Public Service Commission, Administration	41392	R746-430	5YR	03/27/2017	Not Printed
<u>adjudicative proceedings</u> Environmental Quality, Environmental Response and Remediation Heritage and Arts, History Public Safety, Driver License	41404 41341 41130 41131	R311-210 R455-1 R708-14 R708-35	5YR 5YR 5YR 5YR	03/27/2017 03/02/2017 01/08/2017 01/08/2017	Not Printed 2017-7/85 2017-3/103 2017-3/104
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<u>administrative offset</u> Administrative Services, Debt Collection	41377	R21-3	5YR	03/17/2017	Not Printed
<u>administrative procedures</u> Commerce, Consumer Protection Commerce, Occupational and Professional Licensing Heritage and Arts, History Human Resource Management, Administration Human Services, Administration, Administrative Hearings Natural Resources, Forestry, Fire and State Lands	40920 41169 41341 41272 41283 41285 41057 41012 41407 41408 41409	R152-6 R156-46b-202 R455-1 R477-3 R477-12 R477-15 R497-100 R652-1 R652-1 R652-3 R652-4	AMD AMD 5YR EXT EXT EXT AMD AMD 5YR 5YR 5YR	01/09/2017 03/13/2017 03/02/2017 02/02/2017 02/02/2017 02/02/2017 02/07/2017 01/10/2017 03/28/2017 03/28/2017 03/28/2017	2016-22/21 2017-3/8 2017-7/85 2017-5/75 2017-5/77 2017-5/78 2017-1/78 2016-23/97 Not Printed Not Printed Not Printed

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	41415	R652-40	5YR	03/29/2017	Not Printed
	41416	R652-50	5YR	03/29/2017	Not Printed
	41418	R652-70	5YR	03/29/2017	Not Printed
	41420	R652-100	5YR	03/29/2017	Not Printed
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	41015	R652-123	REP	01/10/2017	2016-23/111
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	41392	R746-430	5YR	03/27/2017	Not Printed
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	40773	R307-302	CPR	02/01/2017	2017-1/102
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