

UTAH STATE BULLETIN

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

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.state.ut.us/>

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SPECIAL NOTICES

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT COMMUNITY DEVELOPMENT, LIBRARY

PUBLIC NOTICE OF AVAILABLE UTAH STATE PUBLICATIONS

The Utah State Library Division has made available Utah State Publications List No. 00-19, dated September 15, 2000 (<http://www.state.lib.ut.us/00-19.html>). For a copy of the complete list, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773; or view them on the World Wide Web at the address above.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 2, 2000, 12:00 a.m., and September 15, 2000, 11:59 p.m., are included in this, the October 1, 2000, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least October 31, 2000. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through January 29, 2001, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

**Commerce, Occupational and
Professional Licensing
R156-31b
Nurse Practice Act Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 23140

FILED: 09/11/2000, 16:33

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 1999 legislative session, Title 58, Chapter 31b, the Nurse Practice Act, was amended (S.B. 26). These proposed changes clarify the statutory changes that were made.

(DAR Note: S.B. 26 is found at 1999 Utah Laws 65, and was effective May 3, 1999.)

SUMMARY OF THE RULE OR CHANGE: Added a new Section R156-31b-201 which describes the composition of the Board of Nursing with respect to nurse members. Sections R156-31b-201 and R156-31b-202 have been renumbered accordingly. In Section R156-31b-302c, proposed change deletes language concerning retaking the National Council Licensure Examination (NCLEX) if not passed within two years of completion of an educational program. Also in Section R156-31b-302c, proposed change deletes specific criteria for examination requirements for graduates of non-approved nursing programs. In Section R156-31b-303, added that an advanced practice registered nurse (APRN) if licensed prior to July 1, 1992, must complete 30 hours of approved continuing education and 400 hours of practice for license renewal. In Sections R156-31b-306 and R156-31b-307 regarding reinstatement of licensure, proposed change lengthens expiration time from three to five years before documentation of continuing competency is required. Proposed change also deletes the requirement for those reinstating a license within five years to retake the NCLEX examination.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-101 and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** The Division will incur minimal costs to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division will realize a savings of approximately \$4,320 per year as a result of changes that were made to the number of Nursing Board members.

❖**LOCAL GOVERNMENTS:** Proposed rule does not apply to local governments.

❖**OTHER PERSONS:** Licensed nurses: The Division anticipates a savings of \$185 for RN or LPN applicants for licensure who

graduate from a nonapproved nursing program in that the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination requirement is being deleted. The Division also anticipates a savings of \$120 for licensed nurses that need to reinstate their license due to lengthening the reinstatement time from three to five years in that they would not need to take the NCLEX examination until after five years had passed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any costs associated with this proposed rule change. Only savings are anticipated as identified above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed amendment is to describe the composition of the nurses to serve on the board, eliminates current procedures for failing candidates to qualify to retake the licensing exam, deletes special examination requirements for graduates of nonapproved programs, adds continuing education and practice criteria to renewal of APRN licensees, and extends the period a licensee can remain inactive or be reinstated without retesting. The change of the composition of the board will realize savings of \$4,320 per year to the state budget. There will be no affect on local governments. The elimination of the requirement of the CGFNS examination for candidates from a nonapproved jurisdiction will save such candidates \$185 per exam. Extension of the reinstatement period for inactive licenses from three to five years will save the affected licensees the expense of retaking the NCLEX exam at \$120 per exam. There will be no adverse fiscal impact on the regulated professionals from the adoption of these amendments since APRNs were already required to complete continuing education. Douglas C. Borba

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Lee Duke at the above address, by phone at (801) 530-6179, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.lduke@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: A. Gary Bowen, Director

R156. Commerce, Occupational and Professional Licensing.**R156-31b. Nurse Practice Act Rules.****R156-31b-201. Board of Nursing - Membership.**

In accordance with Subsection 58-31b-201(3), the Board of Nursing shall be composed of the following nurse members:

- (1) four registered nurses, two of whom are actively involved in nursing education;
- (2) one licensed practical nurse; and
- (3) two advanced practice registered nurses or certified registered nurse anesthetists.

R156-31b-[201]202. Advisory Peer Committees Created - Membership - Duties.

There is created in accordance with Subsection 58-1-203(6) and Section 58-31b-202(2), the Advanced Practice Advisory Peer Committee whose duties and responsibilities include reviewing APRN applications and advising regarding practice issues.

R156-31b-[202]203. Prescriptive Practice Peer Committee Audits.

In accordance with Subsection 58-31b-202(1)(b)(ii), the Prescriptive Practice Peer Committee shall audit and review the prescribing records of APRNs by reviewing the controlled substance data bank. The prescribing records of five percent of APRNs with a controlled substance license will be reviewed on a quarterly basis.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.[]

~~—(i) Candidates who fail to pass the NCLEX licensing examination within two years following completion of their educational program shall be required to submit a plan of action for approval by the division in collaboration with the board before being allowed to sit for additional examinations.[]~~

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with his educational specialty:

- (i) one of the following examinations administered by the American Nurses Credentialing Center Certification:
 - (A) Adult Nurse Practitioner;
 - (B) Family Nurse Practitioner;
 - (C) School Nurse Practitioner;
 - (D) Pediatric Nurse Practitioner;
 - (E) Gerontological Nurse Practitioner;
 - (F) Acute Care Nurse Practitioner;
 - (G) Clinical Specialist in Medical-Surgical Nursing;
 - (H) Clinical Specialist in Gerontological Nursing;
 - (I) Clinical Specialist in Community Health Nursing;
 - (J) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;
 - (K) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;
- (ii) National Certification Board of Pediatric Nurse Practitioners and Nurses;

(iii) American Academy of Nurse Practitioners;

(iv) The National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) The Oncology Nursing Certification Corporation; or

(vi) The Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care.

(c) An applicant for licensure as a CRNA shall pass the examination of the Council on Certification of the American Association of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, ~~[the examination requirements for graduates of nonapproved nursing programs are as follows:~~

~~—(a) A]an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.[]~~

~~—(i) Candidates who fail to pass the NCLEX licensing examination within two years following initial application for licensure shall be required to submit, for approval by the division in collaboration with the board, a plan of action detailing steps to be taken by the applicant to prepare to retake the examination, before being allowed to sit for additional examinations.~~

~~—(b) If an applicant for licensure as an RN cannot document satisfactory practice for 4,000 hours in an approved jurisdiction, the applicant shall also pass the CGFNS examination.[]~~

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; ~~[and]or~~

(ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(iii) actively participate in a quality review program defined in Section R156-31b-304.

(c) A CRNA shall complete the following:

(i) be currently certified or recertified as a CRNA; and

(ii) produce evidence of continuing participation in an anesthesia quality assurance program which meets the criteria set forth in the document "Implementing a Quality Assurance Program in Anesthesia Departments, an Action Plan of the Council on Nurse Anesthesia Practice", which is hereby adopted and incorporated by reference.

R156-31b-306. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for ~~three~~five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(3) To reactivate a license which has been inactive for more than ~~three~~five years, the licensee must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license.

R156-31b-307. Reinstatement of Licensure.

(1) In accordance with Section 58-1-308 and Subsection R156-1-308e(3)(b), an applicant for reinstatement of a license which has been expired for ~~three~~five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) ~~[For purposes of reinstatement, the examination must be taken within three years of application, but need not be taken within two years of completing a nursing education program.~~

~~—(3)—~~The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.

KEY: licensing, nurses

[February 15,]2000

58-31b-101

58-1-106(1)

58-1-202(1)



Commerce, Occupational and Professional Licensing
R156-60a-502
Unprofessional Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23146

FILED: 09/14/2000, 08:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needed to update the social work code of ethics to the most current edition.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-60a-502(24), updated the National Association of Social Workers Code of Ethics to the 1999 edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-201 and Subsections 58-1-106(1) and 58-1-202(1)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the 1996 edition of the National Association of Social Workers (NASW) Code of Ethics; and adds the 1999 edition of the NASW Code of Ethics

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division will incur minimal costs to reprint the rule once this proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.

❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.

❖OTHER PERSONS: The Division has determined that there are no costs or savings associated with this proposed rule. The Code of Ethics of the National Association of Social Workers (NASW) can be obtained free through the Association's website at www.socialworkers.org

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division has determined that there are no costs or savings associated with this proposed rule. The Code of Ethics of the National Association of Social Workers (NASW) can be obtained free through the Association's website at www.socialworkers.org

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT

THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed amendment is to update the reference to the Code of Ethics of the National Association of Social Workers contained in the rule to the code version currently in effect. There will be no fiscal impact or affect on the state budget, local governments, the regulated professionals, or the general public through implementation of this change. Douglas C. Borba

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at (801) 530-6720, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.dsjones@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: A. Gary Bowen, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rules.
R156-60a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

- (1) using the abbreviated title of LCSW unless licensed as a LCSW;
- (2) using the abbreviated title of CSW unless licensed as a CSW;
- (3) using the abbreviated title of SSW unless licensed as a SSW;
- (4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302d and R156-60a-601.
- (5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:
 - (a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and
 - (b) the scope of practice is otherwise within the licensee's competency, abilities and education;
- (6) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60a-302c(4) and R156-60a-601(7);
- (7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;
- (8) engaging in or aiding or abetting deceptive or fraudulent billing practices;
- (9) failing to establish and maintain professional boundaries with a client or former client;
- (10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;
- (11) engaging in sexual activities or sexual contact with a client with or without client consent;
- (12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services when there is no risk of exploitation or potential harm to the client;
- (13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;
- (14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;
- (15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;
- (16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;
- (17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;
- (18) exploiting a client or former client for personal gain;

- (19) exploiting a person who has a personal relationship with a client for personal gain;
- (20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;
- (21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;
- (22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;
- (23) failing to protect the confidences of other persons named or contained in the client records; and
- (24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as ~~adopted~~ approved by the NASW 1996 Delegate Assembly [of August 1996] and revised by the 1999 NASW Delegate Assembly, which is adopted and incorporated by reference.

KEY: licensing, social workers

~~[July 19, 1999]~~2000

Notice of Continuation November 15, 1999

58-60-201

58-1-106(1)

58-1-202(1)



**Commerce, Occupational and
Professional Licensing
R156-60b
Marriage and Family Therapist
Licensing Act Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23147

FILED: 09/14/2000, 08:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needed to modify the rule to conform to the statute, Title 58, Chapter 60, which was amended during the 2000 legislative session (S.B. 43) and to make some minor technical corrections in the rule.

(**DAR Note:** S.B. 43 is found at 2000 Utah Laws 159, and was effective May 1, 2000.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-60b-102, definitions of "Candidacy status by the COAMFTE" and "COAMFTE" are being deleted as they are not used in the rule. In Section R156-60b-302a, additions and changes are made to define the education requirements beginning July 1, 2002, to confirm with changes in the statute requiring a more specific degree. In Subsection R156-60b-302a(2), also clarified the practicum supervision requirement. In Section R156-60b-302b, changes clarify the supervision requirement

for experience. In Sections R156-60b-302c and R156-60b-302d, minor changes were made with respect to wording. Also in Section R156-60b-302d, changed experience of a marriage and family therapist supervisor to five years as is specified in the statute rather than 4,000 hours in not less than two years. In Section R156-60b-302e, changes clarify the direct supervision requirement. In Section R156-60b-304, changes clarify the portion of continuing education hours which must be directly related to marriage and family therapy. In Section R156-60b-502, deleted duplicate ethics requirement and updated American Association for Marriage and Family Therapy (AAMFT) Code of Ethics to July 1, 1998 edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-301 and Subsections 58-1-106(1) and 58-1-202(1)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the October 7, 1993, Model Code of Ethics for Marriage and Family Therapists as adopted by the American Association of Marriage and Family Therapy Regulatory Boards (AAMFTRB); deletes the August 1, 1991, Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT); and adds the July 1, 1998, Code of Ethics of the AAMFT

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division will incur minimal costs to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.

❖OTHER PERSONS: Marriage and family therapist (MFT) applicants and/or licensees: The Division does not anticipate any costs or savings to either MFT applicants or licensees as the proposed changes are only clarifying the existing rule or bringing the rule into compliance with the statute. The education requirement is being changed which will require that an applicant obtain a more specific degree. However, the length of education that is required is not substantially changed and a time period has been allowed for those in process of getting the degree under prior law so they can complete licensure without meeting the new requirement. Existing licensees are not required to meet new education requirements. There will be no cost associated with obtaining a copy of the current AAMFT Code of Ethics since they can be obtained free through the Association's website at www.aamft.org

COMPLIANCE COSTS FOR AFFECTED PERSONS: Marriage and family therapist (MFT) applicants and/or licensees: The Division does not anticipate any costs or savings to either MFT applicants or licensees as the proposed changes are only clarifying the existing rule or bringing the rule into compliance with the statute. The education requirement is being changed which will require that an applicant obtain a more specific degree. However, the length of education that is required is not substantially changed and a time period has been allowed for those in process of getting the degree under prior law so they can complete licensure without meeting the

new requirement. Existing licensees are not required to meet new education requirements. There will be no cost associated with obtaining a copy of the current AAMFT Code of Ethics since they can be obtained free through the Association's website at www.aamft.org

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed amendment is to allow students on an educational track eliminated by the 2000 Legislature to continue their education and become licensed under the educational requirements of the old law until July 1, 2002. The proposed amendment also deletes the definition of a term not used in the licensing act or rule. The amendment further clarifies - but does not add to - supervision and continuing education requirements, and modifies the experience requirements for supervisors. It is not anticipated that there will be any fiscal impact upon the state budget or affect on local governments. The educational requirements, although more specific in course content and degree, does not require additional course work so there would be no adverse affect on the regulated professionals. Douglas C. Borba

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at (801) 530-6720, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.dsJones@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 10/27/2000, 9:00 a.m., 160 East 300 South, Conference Room 428, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: A. Gary Bowen, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rules.
R156-60b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) [~~"Candidate status by the COAMFTE" means that an education program leading to an earned master's or doctor's degree in marriage and family therapy has been formally recognized by COAMFTE as a candidate for accreditation:~~]

— (3) "COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education;

— (4) "Face to face supervision" ~~as used in Subsection 58-60-305(6);~~ means one to one supervision between the supervisor and the supervisee or group supervision between the supervisor and up to two supervisees. During group supervision, one and a half hours is equivalent to one clock hour of supervision.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60b-502.

R156-60b-302a. Qualifications for Licensure - Education Requirements.

~~[(1) An institution or program of higher education qualifying an applicant for licensure as a marriage and family therapist, to be recognized or approved by the division in collaboration with the board under Subsections 58-60-305(4)(a) and (c), shall be a marriage and family therapy education program accredited by or in candidacy status by the COAMFTE at the time the applicant received the required earned degree.](1) Pursuant to Subsection 58-60-305(4), an applicant applying for licensure after July 1, 2002 shall:~~

(a) produce certified transcripts evidencing completion of a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy at the time the applicant obtained the education; or

(b) produce certified transcripts evidencing completion of a master's degree in marriage and family therapy from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education which includes courses in the following areas:

(i) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(ii) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy;

(iii) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(iv) three semester hours/three quarter hours in professional ethics;

(v) three semester hours/three quarter hours in research methodology and data analysis;

(vi) three semester hours/three quarter hours in electives in marriage and family therapy; and

(vii) a clinical practicum of not less than 600 hours which includes not less than 100 hours of face to face supervision and not less than 500 hours of supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

(2) Pursuant to Subsection 58-60-305.5(2), an applicant applying for licensure before July 1, 2002 shall meet the following requirements:

(a) produce certified transcripts evidencing completion of a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy; or

(b) produce certified transcripts evidencing an

~~— (2) An] earned doctorate or master's degree in a field of education emphasizing human behavioral studies and skill in therapy or counseling [qualifying an applicant for licensure as a marriage and family therapist under Subsections 58-60-305(4)(b) and (d);] which shall:~~

~~[(a)]i be from an institution which is accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education; and~~

~~[(b)]ii include successful completion of the following graduate level course work and a clinical practicum:~~

~~[(a)]A six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;~~

~~[(b)]B nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy;~~

~~[(c)]C six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;~~

~~[(d)]D three semester hours/three quarter hours in professional ethics;~~

~~[(e)]E three semester hours/three quarter hours in research methodology and data analysis;~~

~~[(f)]F three semester hours/three quarter hours in electives in marriage and family therapy; and~~

~~[(g)]G a clinical practicum of not less than 600 hours which includes not less than 100 hours of face to face supervision and not less than 500 hours of [face to face]-supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room[-]; or~~

~~[(3)]c produce certified transcripts evidencing an[An] earned doctorate or master's degree in a field of religious study with a documented emphasis in marriage and family therapy [qualifying an applicant for licensure as a marriage and family therapist under Subsection 58-60-305(4)(c), shall meet]and which meets the requirements set forth under Subsections (2)(b)(ii)(A) through (G)[(a) through (g)].~~

R156-60b-302b. Qualifications for Licensure - Experience Requirements.

(1) Pursuant to Subsections 58-60-305(5) and (6), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under ~~[a program of]the supervision [by]of a marriage and family therapist supervisor meeting the requirements under Section[s R156-60b-302d and R156-60b-302e] 58-60-307;~~

(d) include at least 200 hours of face to face supervision of which at least 100 hours must be individual supervision;

(e) in accordance with Subsection 58-60-305(6), include a minimum of 1000 hours of mental health therapy of which at least 500 hours in conjoint, couple or family therapy sessions; and

[(e)]f hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(5) and (6), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

R156-60b-302c. Qualifications for Licensure - Examination Requirements.

Pursuant to the provisions of Subsection 58-60-305(7), an ~~an~~ applicant for licensure as a marriage and family therapist ~~[under Subsection 58-60-305(7)]~~ must pass the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor and Mental Health Therapist Training Supervisor.

Pursuant to the provisions of Subsection 58-60-307(1), to ~~to~~ be qualified as a marriage and family therapist supervisor ~~[of marriage and family therapist and mental health therapy]~~ for training required under Subsections 58-60-305(5) and (6), an individual shall:

- (1) be currently approved by AAMFT as a marriage and family therapist supervisor; or
- (2) be currently licensed or certified in good standing as a marriage and family therapist in the state in which the supervised training is being performed; and meet the following requirements:
 - (a) have lawfully engaged in the practice of mental health therapy for not less than ~~[4,000 hours in a period of not less than two]~~ five years;
 - (b) have successfully completed 30 clock hours of instruction approved by the division in collaboration with the board in the theory, practice, and process of supervision; and
 - (c) have successfully completed 36 clock hours of training related to the practice of supervision under the direction of a qualified marriage and family therapist training supervisor.

R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall ~~[as follows]~~:

- (1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;
- (2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
- (3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the

supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established; ~~[and]~~

(10) supervise not more than three supervisees at any given time unless approved by the board and division;

(11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.

R156-60b-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing September 30th of each even numbered year, a marriage and family therapist shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice with at least 15 hours thereof being directly related to marriage and family therapy.

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

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist;

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

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

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

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

(5) Credit for professional education shall be recognized in accordance with the following:

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

(b) a maximum of 14 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist;

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

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

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be

expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) ~~[failure to abide by the provisions of the Model Code of Ethics for Marriage and Family Therapists as adopted by the American Association of Marriage and Family Therapy Regulatory Boards (AAMFTRB) effective October 7, 1993, which is adopted and incorporated by reference; and~~

~~—(20) [failure to abide by [the] provisions 1 to 8.7 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective [August 1, 1991]~~ July 1, 1998, which is adopted and incorporated by reference.

KEY: licensing, therapists, marriage and family therapist*

~~[November 8, 1999]~~ 2000 **58-1-106(1)**

Notice of Continuation November 15, 1999 **58-1-202(1)**

58-60-301



Commerce, Occupational and Professional Licensing

R156-69

Dentist and Dental Hygienist Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23141

FILED: 09/11/2000, 16:33

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division determined that the proposed changes needed to be made to improve continuing education requirements, mandate emergency life support training, and improve monitoring of patients under general anesthesia and deep sedation with respect to dentists.

SUMMARY OF THE RULE OR CHANGE: In Section R156-69-202, added that a dentist holding a Class III permit would be required to hold a current Advanced Cardiac Life Support (ACLS) certification as a qualification for licensure. With respect to a Class III permit holder, proposed changes establish education requirements for 60 hours of didactic education in sedation and successful completion of 20 cases for licensure. In Section R156-69-304a with respect to continuing education, addition was made that any dentist holding a Class III or IV anesthesia permit must complete 15 hours of continuing education related to parenteral anesthesia every two years. These hours may be part of the 30 hours of required continuing education. In Section R156-69-601, added that a Class III permit holder is required to have an electrocardiographic monitoring device in the office. Also added that the dental facility is to be equipped to treat emergencies providing immediate access to advanced airway equipment, resuscitation medications, and a defibrillator. The equipment is to be in good working order, be calibrated, maintained and annually inspected by certified technicians. In Section R156-69-601 an addition being proposed would require all Class III dentist to have three persons, instead of two, be present during the administration of parenteral conscious sedation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-69-101 and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** There will be minimal costs to the Division to reprint the rule once the proposed changes are made effective. Any costs involved will be absorbed in the Division's current budget.

❖**LOCAL GOVERNMENTS:** Proposed rule does not apply to local governments.

❖**OTHER PERSONS:** Public consumer: Increased cost of compliance on the part of the dentist may be passed on to the consumer. Any increase in costs is unknown due to varying circumstances in dental offices.

Licensed dentist: The proposed rule changes will create increased costs for the current 170 dentists holding a Class III or IV anesthesia permit. Costs in training of staff may increase but will not be prohibitive. Many dental offices already have the required staff in place. Trained dental personnel can be brought in for the specific procedures. Dental offices will not be required to hire full-time personnel. The cost for new equipment can range from between \$4,000 to \$20,000 depending on capabilities and sophistication of the defibrillators. The maintenance on the machines is minimal as the devices are warranted and self-diagnosing. Training for dental office staff in Advanced Life Support is already required by many insurance carriers. Costs for the

continuing education should remain the same as the mandated continuing education requirements have not changed. The dentist may see a reduction in liability and malpractice insurance premiums by the addition of the Advanced Cardiac Life Support training, specialized equipment and extra staff.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Public consumer: Increased cost of compliance on the part of the dentist may be passed on to the consumer. Any increase in costs is unknown due to varying circumstances in dental offices.

Licensed dentist: The proposed rule changes will create increased costs for the current 170 dentists holding a Class III or IV anesthesia permit. Costs in training of staff may increase but will not be prohibitive. Many dental offices already have the required staff in place. Trained dental personnel can be brought in for the specific procedures. Dental offices will not be required to hire full-time personnel. The cost for new equipment can range from between \$4,000 to \$20,000 depending on capabilities and sophistication of the defibrillators. The maintenance on the machines is minimal as the devices are warranted and self-diagnosing. Training for dental office staff in Advanced Life Support is already required by many insurance carriers. Costs for the continuing education should remain the same as the mandated continuing education requirements have not changed. The dentist may see a reduction in liability and malpractice insurance premiums by the addition of the Advanced Cardiac Life Support training, specialized equipment and extra staff.

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

The purpose of these proposed amendments is to upgrade the quality of required continuing education for dentists placing patients under conscious sedation or general anesthesia. The amendments also address implementation of improved monitoring of patients under general anesthesia and deep sedation, and mandate emergency life support training. Dental education qualifications would require didactic education in sedation as well as successful training to obtain a Class III license. The amendments would require that dentists performing certain procedures have two assistants assisting rather than the current requirement of only one assistant. Under the proposed rule, a dentist holding a Class III license would also be required to maintain a current Advanced Cardiac Life Support certification. Any dentist holding a Class III anesthesia license would be required to have an electrocardiograph monitoring device and be equipped to conduct emergency resuscitation. Implementation of this rule would have no fiscal impact on the state budget or affect local governments. Although most dentists having a Class III or Class IV license are already equipped for emergencies, those not so equipped will see a substantial financial impact. Included in the expenses will be staff training costs, purchase and maintenance of equipment, salary expense of an additional assistant during procedures involving general anesthesia. In Utah, over 100,000 procedures are performed yearly by the 170 dentists holding Class III or Class IV anesthesia licenses, with over 50,000 being performed by Class IV dentists. In many cases trained assistant personnel

are brought in specifically for the procedures and do not require the dentist to hire additional staff. The cost for the required equipment ranges from \$4,000 to \$20,000 and have little if any maintenance costs accruing. Possible reduction in malpractice premiums could partially offset the cost of the equipment. While it is anticipated that the costs of implementation of these amendments will be passed on to the consumers, such cost are warranted by the increased safety of the public through better trained and equipped dentists. Douglas C. Borba

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Daniel T. Jones at the above address, by phone at (801) 530-6767, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.djones@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 10/20/2000, 9:00 a.m., 160 East 300 South, Conference Room 205, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: A. Gary Bowen, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-69. Dentist and Dental Hygienist Practice Act Rules.
R156-69-202. Qualifications for Anesthesia and Analgesia Permits - Dentist.**

In accordance with Subsection 58-69-301(4)(b), the qualifications for anesthesia and analgesia permits are:

- (1) for a class I permit:
 - (a) current licensure as a dentist in Utah; and
 - (b) documentation of current CPR or BCLS certification;
- (2) for a class II permit:
 - (a) current licensure as a dentist in Utah;
 - (b) documentation of current BCLS certification;
 - (c) evidence of having successfully completed training in the administration of nitrous oxide conscious sedation which conforms to the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Parts I, II, or III, of the American Dental Association, July 1993, which is incorporated by reference; and
 - (d) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(2);
- (3) for a class III permit:
 - (a) compliance with Subsections (1)(a) and (2) above;
 - (b) evidence of current Advanced Cardiac Life Support (ACLS) certification;

(c) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) Registration in good standing;

(~~e~~d) evidence of having successfully completed 60 hours of didactic education in sedation and successful completion of 20 cases~~[comprehensive predoctoral or post doctoral training in the administration of parenteral conscious sedation which conforms to the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part III, of the American Dental Association, July 1993, and a letter from the course director documenting competency in performing parenteral conscious sedation];~~ and

(~~d~~e) certification that the applicant will comply the scope of practice as set forth in Subsection R156-69-601(3); and

- (4) for a class IV permit:
 - (a) compliance with Subsections (1), (2), and (3) above;
 - (b) evidence of current ACLS certification;
 - (c) evidence of having successfully completed advanced training in the administration of general anesthesia and deep sedation consisting of not less than one year in a program which conforms to the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part II, of the American Dental Association, July 1993, and a letter from the course director documenting competency in performing general anesthesia and deep sedation;
 - (d) documentation of successful completion of advanced training in obtaining a health history, performing a physical examination and diagnosis of a patient consistent with the administration of general anesthesia or deep sedation; and
 - (e) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(4).

R156-69-304a. Continuing Education - Dentist and Dental Hygienist.

In accordance with Section 58-69-304, qualified continuing professional education requirements are established as the following:

- (1) All licensed dentists and dental hygienists shall complete 30 hours of qualified continuing professional education during each two year period of licensure.
- (2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.
- (3) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.
- (4) Qualified continuing professional education shall consist of clinically oriented institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning.
- (5)
 - (a) Qualified continuing professional education shall be approved by the Academy of General Dentistry or ADA CERP; or
 - (b) sponsored or presented by the ADA or any subgroup thereof, the ADHA or any subgroup thereof, an accredited dental, dental hygiene, or dental postgraduate program, a government

agency, a recognized dental or health care professional association, or a peer study club.

(6) Qualified continuing professional education does not include courses in practice management.

(7) Any licensee with a class III or IV anesthesia permit must complete at least 15 hours of continuing education related to parenteral anesthesia every two years. These 15 hours may be part of the 30 hours required in Subsection (1).

R156-69-601. Scope of Practice - Anesthesia and Analgesia Permits.

In accordance with Subsection 58-69-301(4)(a), the scope of practice permitted under each classification of anesthesia and analgesia permit includes the following:

- (1) A dentist with a class I permit:
 - (a) may administer or supervise the administration of any legal form of non-drug induced conscious sedation or drug induced conscious sedation except:
 - (i) that which employs the administration of inhalation agents including nitrous oxide; and
 - (ii) the administration of any drug for sedation by any parenteral route; and
 - (b) shall maintain and ensure that all patient care staff maintain current CPR certification.
- (2) A dentist with a class II permit:
 - (a) may administer or supervise the administration of nitrous oxide induced conscious sedation in addition to the privileges granted one holding a Class I permit; and
 - (b) shall ensure that:
 - (i) every patient under nitrous oxide administration is under continuous in-operatory observation by a member of the dental patient care staff;
 - (ii) nitrous oxide and oxygen flow rates and sedation duration and clearing times are appropriately documented in patient records;
 - (iii) reasonable and prudent controls are in place and followed in regard to nitrous oxide to ensure the health and safety of patients, dental office personnel, and the general public;
 - (iv) the dental facility is equipped with adequate and appropriate equipment, in good working order, to assess vital signs; and
 - (v) equipment used in the administration of nitrous oxide has a scavenging system and that all gas delivery units have an oxygen fail-safe system.
- (3) A dentist with a class III permit:
 - (a) may administer or supervise the administration of parenteral conscious sedation in addition to the privileges granted one holding a Class I and Class II permit; and
 - (b) shall ensure that:
 - (i) the dental facility has adequate and appropriate monitoring equipment, including pulse oximetry, electrocardiographic monitoring, current emergency drugs, and equipment capable of delivering oxygen under positive pressure;
 - (ii) the patient's heart rate, blood pressure, respirations and responsiveness are checked at specific intervals during the anesthesia and recovery period and that these observations are appropriately recorded in the patient record;

(iii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, resuscitation medications, and defibrillator;

(iv) the above equipment is inspected annually by a certified technician and is calibrated and in good working order;

(iii) inhalation agents' flow rates and sedation duration and clearing times are appropriately documented in patient records; and
 (iv) a minimum of ~~two~~ three persons are present during the administration of parenteral conscious sedation as follows:

(A) an operating permittee dentist, an assistant to the dentist and an assistant trained and qualified to monitor appropriate and required physiologic parameters;

(B) an operating dentist, an assistant to the dentist and a permittee dentist; or

(C) an operating permittee dentist, an assistant to the dentist and another licensed professional qualified to administer this class of anesthesia.

(4) A dentist with a class IV permit:
 (a) may administer or supervise the administration of general anesthesia or deep sedation in addition to the privileges granted one holding a class I, II and III permit; and

(b) shall ensure that:

(i) the dental facility is equipped with precordial stethoscope for continuous monitoring of cardiac function and respiratory work, electrocardiographic monitoring and pulse oximetry, means of monitoring blood pressure, and temperature monitoring; the preceding or equivalent monitoring of the patient will be used for all patients during all general anesthesia or deep sedation procedures; in addition, temperature monitoring will be used for children;

(ii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, resuscitation medications, and defibrillator;

(iii) the above equipment is inspected annually by a certified technician and is calibrated and in good working order; and

(iv) three qualified and appropriately trained individuals are present during the administration of general anesthesia or deep sedation as follows:

(A) an operating dentist holding a permit under this classification, an anesthesia assistant trained to observe and monitor the patient using the equipment required above, and an individual to assist the operating dentist;

(B) an operating dentist, an assistant to the dentist and a dentist holding a permit under this classification; or

(C) another licensed professional qualified to administer this class of anesthesia and an individual to assist the operating dentist.

(5) Any dentist administering any anesthesia to a patient which results in, either directly or indirectly, the death or adverse event resulting in hospitalization of a patient shall submit a complete report of the incident to the board within 30 days.

KEY: licensing, dentists, dental hygienists*
April 1, 19982000 **58-69-101**
58-1-106(1)
58-1-202(1)



Environmental Quality, Air Quality
R307-204
 Emission Standards: Smoke
 Management

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 23139

FILED: 09/07/2000, 11:53

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To establish procedures that mitigate the impact on public health, public safety and visibility of prescribed fire and wildland fire.

SUMMARY OF THE RULE OR CHANGE: The rule applies to all persons using prescribed fire or wildland fire on land they own or manage. The rule does not apply to agricultural activities specified in Utah Code 19-2-114; i.e., ..." (1) burning incident to horticultural or agricultural operations of (a) prunings from trees, bushes, and plants; or (b) dead or diseased trees, bushes, and plants, including stubble; (2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes; (3) controlled heating of orchards or other crops to lessen the chances of their being frozen, so long as the emissions from this heating do not violate minimum standards set by the board; and (4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training..." **SMALL PRESCRIBED FIRES** are allowed only when the clearing index is 500 or better, and the land manager must notify the executive secretary of the Air Quality Board on the morning of the fire. For **LARGE PRESCRIBED FIRES** burning more than 50 acres each day, the rule requires that land managers submit their burn schedules no later than March 15 each year. The land manager is required to submit to the executive secretary a burn plan two weeks before the burn is scheduled including distance and direction from sensitive populations, planned mitigation methods, a description of how the public will be notified, safety and contingency plans for addressing any smoke intrusions, and how the land manager will monitor the effects of the smoke. A burn request shall be submitted two days before the planned ignition time, and the burn may not be ignited until the executive secretary approves or conditionally approves the request. For each day that 50 acres or more is burned, a daily emissions report, including emissions reduction techniques, shall be submitted on the following morning. Records of hourly smoke observations shall be kept for six months for inspection by the executive secretary. For a large wildland fire managed for resource benefits, the land manager shall notify the executive secretary by the close of business the day the fire exceeds 20 acres, shall submit a burn plan within 48 hours, and shall not manage the fire for resource benefits until the executive secretary approves the smoke management elements in the

plan. If the executive secretary determines, after consultation with the land managers, that fires are degrading air quality to levels that could violate the federal health-based standards, the land manager shall promptly stop ignition actions on prescribed fires, curtail the ignition of additional prescribed fires, and suppress wildland fires. The rule supplements the Smoke Management Plan approved in a Memorandum of Understanding signed by the Utah Department of Natural Resources, the Utah Division of Air Quality, the Federal Bureau of Land Management, the National Park Service, and the U.S. Forest Service on March 23, 2000.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-2-104(1)(a) and 19-2-104(1)(c)

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Expenses of staffing the smoke management program are shared by the state and federal agencies. Department of Natural Resources will incur small expense for submitting burn plans and burn requests for state lands, and may have additional expenses in using alternative methods to avoid burning or to manage smoke to reduce impacts on sensitive populations. These costs are unknown because the alternative methods have variable costs and the methods used will vary with the terrain, vegetation, weather and other conditions. In addition, the Department of Natural Resources assists private landowners in completing paperwork, and may have additional small expense for that.

❖**LOCAL GOVERNMENTS:** Local governments will not be affected by the rule unless they manage wildlands or use prescribed fire. If so, their costs will approximate those of other persons--see "Compliance costs for affected persons" below.

❖**OTHER PERSONS:** Most of the paperwork required by this rule is already used by governmental land managers. Private landowners may incur additional expense in paperwork. Both agencies and private land owners may incur additional expense in choosing alternatives to fire and in managing fires to avoid harmful impact on sensitive populations but those costs are highly variable depending on the alternatives used, the terrain, the vegetation, the weather and other factors. Using alternatives to fire and managing fires to avoid harmful impacts will result in some savings in reduced illness, emergency room visits, lost work and school time for sensitive individuals such as asthmatics and the elderly. However, those benefits are not quantifiable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Most of the paperwork required by this rule is already used by governmental land managers. Private landowners may incur additional expense in paperwork. Both agencies and private land owners may incur additional expense in choosing alternatives to fire and in managing fires to avoid harmful impact on sensitive populations but those costs are highly variable depending on the alternatives used, the terrain, the vegetation, the weather and other factors. Using alternatives to fire and managing fires to avoid harmful impacts will result in some savings in reduced illness, emergency room visits, lost work and school time for sensitive individuals such as asthmatics and the elderly. However, those benefits are not quantifiable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Land managers are working to restore healthy ecosystems, and are including the use of fire as a management tool. This rule ensures that public health is better protected. Very few businesses will be affected by the rule, and their costs are uncertain. Dianne Nielson

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

Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 11/15/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 11/01/2000, Room 101 DEQ Building, 168 North 1950 West, Salt Lake City, UT, in two sessions: 3:30-5:00 p.m. and 6:00 p.m. until finished.

THIS RULE MAY BECOME EFFECTIVE ON: 01/04/2000

AUTHORIZED BY: Rick Sprott, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-204. Emission Standards: Smoke Management.

R307-204-1. Purpose and Goals.

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impact on public health, public safety and visibility of prescribed fire and wildland fire.

R307-204-2. Applicability.

(1) R307-204 applies to all persons using prescribed fire or wildland fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114.

R307-204-3. Definitions.

The following additional definitions apply only to R307-204.

"Burn Plan" means the plan required for each fire ignited by managers or allowed to burn.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Class I Area" means Zion National Park, Bryce National Park, Capitol Reef National Park, Arches National Park, Canyonlands National Park.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicate other required actions. Prescription criteria may include safety,

economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Maintenance Area" means an area that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

"Prescribed Fire or Prescribed Burn" means any fire ignited by management actions to meet specific objectives, such as achieving resource benefits.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities.

"Wildland Fire" means any non-structure fire, other than prescribed fire, that occurs in the wildland.

"Wildland Fire Used for Resource Benefits (WFURB)" means naturally ignited wildland fire that is managed to accomplish specific prestated resource management objectives in predefined geographic areas.

R307-204-4. General Requirements.

(1) Management of On-Going Fires. If, after consultation with the land manager, the executive secretary determines that a prescribed fire, wildland fire used for resource benefits, wildland fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop ignition actions on existing prescribed fires, curtail the ignition of additional prescribed fires and suppress wildland fires.

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the executive secretary.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed fire and wildland fire burning more than 50 acres per year shall submit the burn schedule to the executive secretary on forms provided by the Division of Air Quality, and shall include the following information for all fires including those smaller than 50 acres:

(a) Project number and project name;

(b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;

(c) Total project acres, description of major fuels, type of burn, and ignition method;

(d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

R307-204-6. Small Prescribed Fires.

(1) For a prescribed fire that covers less than 20 acres per burn and results in air emissions less than 0.5 tons of particulate matter per day, the land manager shall notify the executive secretary by fax, electronic mail or phone on the morning of the prescribed burn.

(2) A prescribed fire that covers less than 20 acres per burn and results in air emissions less than 0.5 tons of particulate matter per day shall be ignited only when the clearing index is 500 or greater.

R307-204-7. Large Prescribed Fires.

(1) Burn Plan. For a prescribed fire that covers 20 acres or more per burn or results in air emissions of 0.5 tons or more of particulate matter per day, the land manager shall submit to the executive secretary a burn plan two weeks before the beginning of the burn window.

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn or results in air emissions of 0.5 tons or more of particulate matter per day, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives;

(c) Any Class I or Non-attainment Area within 15 miles;

(d) Any sensitive receptor and distance and direction in degrees from the project site;

(e) Planned mitigation methods;

(f) The smoke dispersion model used;

(g) The estimated amount of total particulate matter anticipated;

(h) A description of how the public will be notified;

(i) A map, preferably with a scale of 1:62,500, depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(j) Safety and contingency plans for addressing any smoke intrusions; and

(k) If the fire is in a nonattainment or maintenance area, a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act, including the provision of 42 U.S.C. 7506(c), indicating that the fire conforms with the applicable State Implementation Plan.

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 10:00 a.m. at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the executive secretary approves or conditionally approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 8:00 a.m. the following day.

(4) Daily Emissions Report. By 8:00 a.m. on the day following the prescribed burn, for each day of prescribed fire activity covering 50 acres or more, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of whether the fire has met the criteria of the fire prescription; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

R307-204-8. Requirements for Wildland Fire with Potential for Use for Resource Benefits.

(1) Burn Approval Required.

(a) The land manager shall notify the executive secretary by the close of business of the first day of any wildland fire that covers 20 acres or more. The notification shall include the following information:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

- (iii) Probable fire size and daily anticipated growth in acres;
- (iv) Types of wildland fuel involved;
- (v) An emergency telephone number that is answered 24 hours a day; and
- (vi) Wilderness or Resource Natural Area designation, if applicable.

(b) The following information shall be submitted to the executive secretary 48 hours after submittal of the information required by (1)(a) above:

- (i) Burn plan and anticipated emissions;
- (ii) A map, preferably with a scale of 1:62,500, depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and
- (iii) Additional computer smoke modeling, if requested by the executive secretary.

(c) The executive secretary's approval of the smoke management element of the burn plan shall be obtained before managing the fire as a wildfire used for resource benefits.

(2) Daily Emission Report for Wildland Fire Used for Resource Benefits. By 8:00 a.m. on the day following fire activity covering 50 acres or more, the land manager shall submit to the executive secretary the daily emission report on the form provided by the Division of Air Quality, including the following information:

- (a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;
- (b) UTM coordinate;
- (c) Dates and times of the start and end of the burn;
- (d) Black acres by wildland fuel type;
- (e) Estimated proportion of wildland fuel consumed by wildland fuel type;
- (f) Proportion of moisture in the wildland fuel by size class;
- (g) Emission estimates;
- (h) Level of public interest or concern regarding smoke; and
- (i) Conformance to the burn plan.

(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the burn plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

KEY: air quality, fire*, smoke*, land manager*
2000 **19-2-104(1)(a)**



Environmental Quality, Drinking Water
R309-301
(Changed to R309-300)
Required Certification Rules for Water
Supply Operators in the State of Utah

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE No.: 23159
 FILED: 09/14/2000, 17:28
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is in response to a federal Safe Drinking Water Act requirement for all community and all non-transient non-community water systems to have a certified operator. Additionally, this rule is being renumbered to conform to the recently adopted rule numbering format that is being implemented by the Division.

SUMMARY OF THE RULE OR CHANGE: This rule filing requires all community and nontransient, noncommunity water systems to have a certified operator. Previously, only community water systems serving a population of 800 or more were required to have a certified operator. Not affected by this rule change is the requirement for any public water system that employs treatment techniques for surface water or ground water under the direct influence of surface water to have a certified operator.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

FEDERAL REQUIREMENT FOR THIS RULE: Safe Drinking Water Act (amended August 6, 1996), Title XIV, Section 1419

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** The Division will face an increase in certified operators of 40%. The increased workload will be handled by the increase in collection of certification fees and by the federal State Revolving Loan Fund. If the rule is not adopted then the state will lose 20% of the federal State Revolving Loan Funds or approximately \$1,200,000 per year (20% of \$6,000,000)

❖**LOCAL GOVERNMENTS:** Municipalities and districts operating public water systems under 800 population will incur an initial \$70 certification fee, the cost of 20 training hours over a 3 year period and certification renewal cost of \$50 ever 3 years.

❖**OTHER PERSONS:** Owners and operators of other public water systems under 800 population will incur an initial \$70 certification cost, the cost of 20 training hours over a 3 year period and certification renewal cost of \$50 ever 3 years. Consumers are unlikely to face increased water rates as a result of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will impose slight additional costs on the small community and non-transient non-community systems across the state. In return, water systems will be run by more knowledgeable individuals who have met basic educational requirements as shown by water system compliance or an examination process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments reported above. It is to the benefit of the State, regulated public water systems and the public to adopt this rule and to retain the full federal allotment for the State Revolving Loan Fund. These loan funds are critical to upgrading the aging drinking water infrastructure throughout the state and thereby protecting public health. Dianne R. Nielson

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

Environmental Quality
Drinking Water
150 North 1950 West
PO Box 144830
Salt Lake City, UT 84114-4830, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ken Bousfield or Patti Fauver at the above address, by phone at (801) 536-4207 or (801) 536-4196, by FAX at (801) 536-4211, or by Internet E-mail at kbousfie@deq.state.ut.us or pfauver@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Kevin W. Brown, Director and Executive Secretary of the Drinking Water Board

R309. Environmental Quality, Drinking Water.

~~[R309-301.]R309-300. [Required]~~ Certification Rules for Water Supply Operators ~~[in the State of Utah].~~

~~[R309-301-1.]R309-300-1. Objectives.~~

These certification rules are established to promote use of trained, experienced, and efficient personnel in charge of public waterworks and to establish standards whereby operating personnel can demonstrate competency to protect the public health through proficient operation of waterworks facilities.

~~[R309-301-2.]R309-300-2. Authority.~~

Utah's Operator Certification Program is authorized by Section 19-4-104.

~~[R309-301-3.]R309-300-3. Extent of Coverage - To Whom Rules Apply - Effective Date.~~

These rules shall apply to all community and non-transient non-community ~~[public]~~ drinking water ~~[supply]~~ systems ~~[serving more than 800 individuals]~~ and all public drinking water systems that utilize treatment of the drinking water. This shall include both water treatment and distribution systems. ~~[These requirements shall be met by all such systems by January of 1994.]~~

The certification requirements shall become effective February 1, 2001 for non-transient non-community drinking water systems and for community water systems serving less than 800 population

utilizing only ground water or wholesale sources. These water systems shall have until February 1, 2003 to meet these requirements. For further information on this program, contact the Division of Drinking Water, telephone 536-4200.

~~[R309-301-4.]R309-300-4. Definitions.~~

"Board" see the definition of: Drinking Water Board below.

"Commission" see the definition of: Operator Certification Commission.

"Community Water System" means a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Continuing Education Unit (CEU)" means ten contact hours of participation in, and successful completion of, an organized and approved continuing education experience under responsible sponsorship, capable direction, and qualified instruction. College credit in approved courses may be substituted for CEUs on an equivalency basis.

"Direct Employment" means that the operator is directly compensated by the drinking water system to operate that drinking water system.

"Direct Responsible Charge" means active on-site charge and performance of operation duties. A person in direct responsible charge is generally an operator of a water treatment plant or distribution system who independently makes decisions during normal operation which can affect the sanitary quality, safety, and adequacy of water delivered to customers. In cases where only one operator is employed by the system, this operator shall be considered to be in direct responsible charge.

"Discipline" means type of certification (Distribution or Treatment).

"Distribution System" means the use of any spring or well source, distribution pipelines, appurtenances, and facilities which carry water for potable use to consumers through a public water supply. Systems which chlorinate groundwater are in this discipline.

"Distribution System Manager" means the individual responsible for all operations of a distribution system.

"Division of Drinking Water" means the Division within the Utah Department of Environmental Quality which regulates public water supplies.

"Drinking Water Board" means the board appointed by the Governor responsible for promulgation, interpretation and enforcement of Drinking Water Rules in Utah.

"Executive Secretary" means the individual authorized by the Drinking Water Board to conduct business on its behalf. The Executive Secretary has been delegated the responsibility of conducting the necessary daily duties of the Board.

"Grade" means any one of ~~the~~four possible steps within a certification discipline of either water distribution or water treatment. The water distribution discipline has five steps and the water treatment discipline has four steps. Treatment Grade I and Distribution Small System indicate~~[indicates]~~ knowledge and experience requirements for the smallest type of public water supply. Grade IV indicates knowledge and experience levels appropriate for the largest, most complex type of public water supply.

"Grandparent~~[Grandfather]~~ Certificate" means the operator has not been issued an Operator Certificate through the examination

process and that a restricted certificate has been issued to the operator which is limited to his current position and system. These certificates cannot be used with any other system should the operator transfer. ~~Grandfather certificates will be issued January 1, 1993 through March 31, 1993. No further grandfather certificates will be issued thereafter.]~~

"Non-Transient Non-Community Water System" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

"Training Coordinating Committee" means the voluntary association of individuals responsible for environmental training in the state of Utah.

"Operator" means a person who operates, repairs, maintains, and is directly employed by or an appointed volunteer for a public drinking water system.

"Operator Certification Commission" means the Commission appointed by the Drinking Water Board as an advisory Commission on certification.

"Public Drinking Water System" means any drinking water system, either publicly or privately owned, that has at least 15 connections or serves at least 25 people for at least 60 days a year.

"Regional Operator" means a certified operator who is in direct responsible charge of more than one public drinking water system.

"Restricted Certificate" means that the operator has qualified by passing an examination but is in a restricted certification status due to lack of experience as an operator.

"Secretary" means the Secretary to the Operator Certification Commission. This is an individual appointed by the Executive Secretary to conduct the business of the Commission.

"Specialist" means a person who has successfully passed the written certification exam and meets the required experience, but who is not in direct employment with a Utah public drinking water system.

"Treatment Plant Manager" means the individual responsible for all operations of a treatment plant.

"Treatment Plant" means those facilities capable of delivering complete treatment to any water (the equivalent of coagulation and/or filtration) serving a public drinking water supply.

"Unrestricted Certificate" means that a certificate of competency has been issued by the Board on the recommendation of the Commission. This certificate implies that the operator has passed the appropriate level written examination and has met all certification requirements at the discipline and grade stated on his certificate.

~~R309-301-5.]R309-300-5. General Policies.~~

1. In order to become a certified water operator or specialist, an individual shall pass an examination administered by the Division of Drinking Water or qualify for the grandparent provisions outlined in R309-300-13.

2.[+] Any properly qualified operator (see Minimum Required Qualifications for Utah Waterworks Operators Table 5) may apply for unrestricted certification.

3.[2-] Any properly qualified person (see Minimum Required Qualifications for Water System Specialists Table 6) may apply for Specialist certification. A Specialist, regardless of discipline or grade, shall not act as a direct responsible charge operator, or be in

direct operation or supervise the direct operation of, any public drinking water system.

4.[3-] An individual who holds a current Specialist Certificate may apply for an Operator Certificate of the same discipline and grade upon verification of direct employment with a public drinking water system. An individual who holds a current Operator Certificate (Restricted and Unrestricted) may apply for a Specialist Certificate of the same discipline and grade if that operator leaves the direct employment of a drinking water system.

5.[4-] All direct responsible charge operators shall be certified at a minimum of the grade level of the water system[The Distribution System or Treatment Plant manager is required to be certified at the grade of the waterworks system] with an appropriate[unrestricted] certificate.[All other direct responsible charge operators shall be certified at an equivalent or not more than one grade lower.] Where 24-hour shift operation is used or required, one operator per shift must be certified at [not less than one grade below] the classification of the system operated.

6.[5-] The Board, upon recommendation from the Commission, may waive examination of applicants holding a valid certificate or license issued in compliance with other state certification plans having equivalent standards, and grant reciprocity.

7.[6-] A grandparent[grandfather] certificate will require normal renewal as with other certificates and will be restricted to the existing position, person, and system for which it was issued. No further examination will be required unless the grade of the drinking water system increases or the operator seeks to change the certificate discipline or grade. At that time, all normal certification requirements must be met.

8.[7-] Every [public]community and non-transient non-community drinking water [distribution] system [that serves a population of 800 or more,] and all public systems that utilize[employ] treatment of the drinking water shall have at least one operator certified at the classified grade of the water system, [by January 1, 1994.] The certification requirements for non-transient non-community drinking water systems and for community water systems serving less than 800 population, serving only ground water, shall be met by February 1, 2003. Certification must be appropriate for the type of system operated (treatment and/or distribution).

9.[8-] An individual who is issued an Operator Certificate shall be employed by or an appointed volunteer for a public drinking water supply located in Utah.

10.[9-] If the Distribution or Treatment Plant Manager is changed or leaves a particular water system, the water system management must notify the Secretary to the Operator Certification Commission within ten days by contacting the Division of Drinking Water in writing. Within one year, or four[two] examination cycles, whichever is longer, the operator in the position of plant or system manager that requires certification must have passed an examination of the appropriate grade and discipline. Direct responsible charge experience may be gained later, together with unrestricted certification as experience is gained.

11.[10-] The Secretary to the Commission may suspend or revoke a certificate after due notice and opportunity for a hearing. See Section R309-300-9[R309-301-9] for further details.

12.[11-] An operator may have the opportunity to take any grade of examination higher than the rating of the system which he

operates. If passed, the operator shall be issued a restricted certificate at that higher grade. This certificate can be used to demonstrate that the operator has successfully passed all knowledge requirements for that discipline and grade, but that experience is lacking. This restricted certificate will become unrestricted when the experience requirements are met with written verification for the appropriate discipline and grade, provided it is renewed at the required intervals.

~~13.[+2:]~~ The Commission will review on a periodic basis each system's compliance with these rules and will refer those systems in violation to the Board for appropriate action. Any requirement can be appealed to the Board where unusual conditions warrant an exemption. Formal action in these areas will be taken on each case. The Commission will work closely with water system managements to ensure that efforts are underway to meet the requirements of these rules.

~~14.[+3:]~~ An operator who is acting as the direct responsible charge operator for more than one drinking water system (regional operator) shall not be a grandparent~~(Grandfather)~~ certified operator.

~~15.[+4:]~~ The regional operator must have an unrestricted certificate equal to or higher than the grade and discipline of the rating applied to each system he is operating.

~~16.[+5:]~~ If the regional operator is operating any system(s) that have both disciplines involved in their rating, the operator must have unrestricted certificates in both disciplines and at the highest grade of the most complex system he is working with.

~~17. A regional operator shall be within a one hour travel time, under normal work and home conditions, of each drinking water system for which he is considered in direct responsible charge unless a longer travel time is approved by the Operator Certification Commission based on availability of certified operators and the distance between community water systems in the area.~~

~~18.[+6:]~~ If the drinking water system has only one certified operator, with the exception of a drinking water system employing a regional operator, the operator must have a back up operator certified in the required discipline(s) and not more than one grade lower than the drinking water system's grade. The back up certified operator must be within one hour travel time of the drinking water system.

~~19.[+7:]~~ At no time will an uncertified operator be allowed to operate a drinking water system covered by these rules.

~~**[R309-301-6:]R309-300-6. Application for Examination.**~~

1. Prior to taking an examination, the operator or specialist must file a written application with the Division of Drinking Water, accompanied by evidence of his qualifications for certification in accordance with provisions of this plan (see tables on minimum qualifications). Such applications shall be made on forms supplied by the Division.

2. An operator may elect to challenge any written examination which he believes can be successfully passed. Persons passing such a challenged examination shall be issued restricted certificates for the appropriate discipline and grade.

~~**[R309-301-7:]R309-300-7. Examinations.**~~

1. The time and place of the examination to qualify for a certificate shall be determined by the Commission. All examinations for certification shall be given not less than twice a year, generally at each of 12 district health department offices. All

examinations will be conducted on the same day, graded, and the applicant notified of the results within 30 days. If an operator taking the examination fails to pass, he may file an application for reexamination at the next available date.

2. The minimum passing grade for all certification exams shall be 70 percent correct on all questions asked.

3. An individual who has failed to pass at least two consecutive written exams, at the same grade level and discipline, may appeal the results by making an application for an oral exam. The oral exam will be administered by at least two Commission members. If the individual fails this exam, he will be given written notice of those areas deficient and asked to reapply for a written examination.

4. Examinations will be given in nine~~[four]~~ grades, four in water treatment and five water distribution. The examinations will cover, but not be limited to, the following areas:

- (a) general water supply knowledge;
- (b) control processes in water treatment or distribution;
- (c) operation, maintenance, and emergency procedures in treatment or distribution;
- (d) proper record keeping;
- (e) laws and requirements, and water quality standards.

5. The written examination for specialist certification will be the same examination that is given for operator certification.

6. The written examination question bank and text matrix shall be reviewed periodically by the Commission.

~~**[R309-301-8:]R309-300-8. Certificates.**~~

1. All certificates shall indicate the discipline for which they were issued as follows:

- (a) Water Treatment Plant Operator, Unrestricted;
- (b) Water Treatment Plant Operator, Restricted;
- (c) Water Distribution Operator, Unrestricted;
- (d) Water Distribution Operator, Restricted;
- (e) Water Treatment Specialist;
- (f) Water Distribution Specialist;
- (g) Small System, Unrestricted;
- (h) Small System, Restricted;
- (i) Grandparent.

2. A restricted certificate will be issued to those operators who have passed a higher grade examination than the grade for which they have qualified in the experience category. Upon accumulating the necessary experience, these restricted certificates will become unrestricted with the same renewal date. Certificates issued in the restricted status will be stamped with the word RESTRICTED on the bottom left corner of the certificate.

3. Grandparent~~(Grandfather)~~ certificates will be restricted to the person, position, and water system for which they were issued. These certificates will exempt the holder from further examination but will not be transferable to other persons, drinking water systems or positions.

4. A Specialist Certificate will be issued to those persons who have met the experience requirements and have successfully passed the written examination, but who are not in direct employment with a Utah Public Drinking Water System or in the case of requested conversion (see R309-300-8(5)~~[R309-301-8(5)]~~).

5. An individual who currently holds a valid Utah Operator Certificate and who is no longer directly employed by a Utah

drinking water system may request his Operator Certificate be converted to a Specialist Certificate with the same expiration date.

6. All certificates shall continue in effect for a period of three years unless suspended or revoked prior to that time. The certificate must be renewed every three years by payment of a renewal fee and evidence of required training (see ~~R309-300-14~~[~~R309-301-13~~]). Certificates will expire on December 31, three years from the year of issuance.

7. Failure to remain active in the waterworks field during the three-year life of the Operator Certificate can be cause for denial of the application renewal.

8. Requests for renewal shall be made on the forms supplied by the Division of Drinking Water.

9. A lapsed certificate may be renewed within 6 months of the expiration date, by payment of the reinstatement fee or [and either] passing an examination, [or, at the discretion of the Secretary to the Commission after] After the first six months from the expiration date, the operator shall have one year to appeal to the Operator Certification Commission for renewal of the certificate. After considering the training, experience, education and progress made since the certificate lapsed, the Commission may grant reinstatement[may be granted] without examination.

~~[R309-301-9.]~~**R309-300-9. Certificate Suspension and Revocation Procedures.**

1. When the Secretary is considering the suspension or revocation of an Operator's or Specialist's certificate, the individual shall be so informed in writing. The communication shall state the reasons for considering such action and allow the individual an opportunity for a hearing.

2. Grounds for suspending or revoking an Operator's or a Specialist's certificate shall be any of the following:

- (a) demonstrated disregard for the public health and safety;
- (b) misrepresentation or falsification of figures and reports, or both, submitted to the State;
- (c) cheating on a certification exam;
- ~~(d) mental or physical incapacity of the operator to perform operating duties.~~

3. Suspension or revocation will be possible when it can be shown that the circumstances and events were under an Operator's or a Specialist's jurisdiction and control. Disasters or "acts of God" which could not be reasonably anticipated will not be grounds for a suspension or a revocation action.

4. Following an appropriate hearing on these matters, the Commission will take formal action. This action shall include a description of the findings of fact to be placed in the Operator's or the Specialist's certification file and mailed to the Operator or the Specialist involved. This communication shall also state the lengths of suspension or revocation, and the procedures to reapply for certification at the end of the specified disciplinary period.

5. Any suspension or revocation may be appealed to the Drinking Water Board by filing a request for a hearing with the Executive Secretary. The Executive Secretary shall place this matter on the agenda of the next regular meeting and so inform the appellant. The request for a hearing must be received by the Executive Secretary at least 14 calendar days prior to a scheduled Board meeting in order to be placed on the Board's agenda.

~~[R309-301-10.]~~**R309-300-10. Fees.**

1. Fees for operator and specialist certification shall be submitted in accordance with Section 63-38-3.

2. Examination fees from applicants who are rejected before examination will be returned to the applicant.

3. Application fees will not be returned.

~~[R309-301-11.]~~**R309-300-11. Facilities Classification System.**

1. All treatment plants and distribution systems shall be classified in accordance with ~~R309-300-19.~~~~[the appropriate tables in these rules.]~~

2. Classification will be made by either the point system or on a population-served basis, whichever results in a higher classification.

3. When the classification of a system is upgraded or added to existing system ratings, the Secretary to the Commission will make a decision on the timing to be allowed for operators to gain certification at the higher or different level.

~~[R309-301-12.]~~**R309-300-12. Qualifications of Operators.**

1. Minimum qualifications are outlined in Minimum Required Qualifications for Utah Waterworks Operators, Table 5, and Minimum Certification Qualifications for Water System Specialists, Table 6, included with these rules (see Section ~~R309-300-19~~[~~R309-301-18~~]).

2. Approved high school equivalencies can be substituted for the high school graduation requirement.

3. Education of an operator can be substituted for experience, but no more than 50 percent of the experience may be satisfied by education. Note: The exception to this is in grades I and II, where the "one year of experience" requirement cannot be reduced by any amount of education.

4. Education of a specialist cannot be substituted for the required experience (see Minimum Certification Qualifications for Water System Specialists Table 6).

R309-300-13. Grandparent Certification Criteria.

1. The owner of a non-transient non-community drinking water system or a community water system serving 800 or less population and which utilizes only groundwater or wholesale sources may apply for Grandparent certification for the operators in direct responsible charge of their water system by February 1, 2003.

2. Applications for grandparent certification shall be made on applications supplied by the Division of Drinking Water. The applications must be received by the Division of Drinking Water no later than the date listed above, thereafter applications for grandparent certifications will not be accepted.

3. Grandparent certificate will be available for community and non-transient non-community water systems that serve a population of 800 or less and to operators who meet the following criteria:

(a) System serving 500 or less population (Small System operator):

(i) The operator shall have at least 3 years experience operating the water system for which grandparent certification is being applied for.

(ii) The operator shall have operated the water system in compliance with the Utah Public Drinking Water Rules (R309-100 through R309-820) for the most recent 3 year time period. Compliance shall mean that the system shall not have at any time exceeded the 75 percent of allowable number of Improvement Priority points allowed for an "Approved" water system in R309-150. For purposes of compliance determination for grandparent certification qualification only, points assessed for capital improvements that exceed a cost of \$1,000 will be excluded from the total.

(b) System serving 501 to 800 population (Distribution I operator):

(i) The operator shall have at least 5 years experience operating the water system for which grandparent certification is being applied for.

(ii) The operator shall have operated the water system in compliance with the Utah Public Drinking Water Rules (R309-100 through R309-820) for the most recent 5 year time period. Compliance shall mean that the system shall not have at any time exceeded the 75 percent of allowable number of Improvement Priority points allowed for an "Approved" water system in R309-150. For purposes of compliance determination for grandparent certification qualification only, points assessed for capital improvements that exceed a cost of \$1,000 will be excluded from the total.

4. If an operator is denied certification through the Grandparent process, the decision may be appealed as outlined in R309-300-9(4) and R309-300-9(5) of these rules.

[R309-301-13;R309-300-14. CEUs and Approved Training.

1. CEUs will be required for renewal of all certificates (grandparent, restricted and unrestricted) according to the following schedule:

TABLE 1

CLASSIFICATION	CEUs REQUIRED IN A 3-YEAR PERIOD
Small System	2
Grade 1	2
Grade 2	2
Grade 3	3
Grade 4	3

2. Grandparent certificates are required to have 2.0 or 3.0 CEUs, as per the water system classification, for certificate renewal. Grandparent certificates issued after the calendar year of 2000 are required to obtain 0.7 CEUs of an approved pre-exam training course as part of the 2.0 CEU renewal requirement. These specific CEUs shall be obtained during the first renewal cycle of said certificate.

3.[2:] Groups that currently sponsor approved education activities in Utah are:

- The Rural Water Association of Utah;
- Salt Lake Community College
- Utah Valley State College;
- Utah State University at Logan;
- Utah Department of Environmental Quality;
- Manufacturer's Representatives;
- American Water Works Association;

American Backflow Prevention Association.

4.[3:] A continuing education unit is defined as 10 contact hours of participation in, and successful completion of, an organized and approved training education experience under qualified instruction.

5.[4:] College level education is accepted in drinking water related disciplines upon approval of the Secretary to the Commission as to CEU credits (1 quarter credit hour will equal 1.0 CEU or 1 semester credit hour will equal 1.5 CEUs).

6.[5:] All CEUs for certificate renewal shall be subject to review for approval to insure that the training is applicable to waterworks operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Secretary to the Commission. Training records will be maintained by the Division of Drinking Water.

7.[6:] All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Secretary to the Commission in writing prior to the training.

8.[7:] In-house or in-plant training submitted to the Secretary of the Commission must meet the following general criteria to be approved:

(a) Instruction must be under the supervision of an approved instructor.

(b) An outline must be submitted of the subjects to be covered and the time to be allotted to each area.

(c) A list of the teacher's objectives shall be submitted which will document the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

9.[8:] One CEU credit will be given for registration and attendance at the annual technical program meeting of the American Water Works Association (AWWA), the Intermountain Section of AWWA, the Rural Water Association of Utah, or the National Rural Water Association.

[R309-301-14;R309-300-15. Validation of Previously Issued Certificates.

1. All current certificates issued by the Executive Secretary will remain in effect until their stated date of expiration and may be renewed at any time before this date in accordance with the rules established herein. Certificates will be issued for a three-year period.

2. Those individuals who were issued Grandparent[Grandfather] Certificates and subsequently passed an examination within the same discipline, at the same grade, or a higher grade will be issued a new unrestricted certificate which will nullify the existing "Grandparent[Grandfather]" certificate.

[R309-301-15;R309-300-16. Operator Certification Commission.

1. An Operator Certification Commission shall be appointed by the Drinking Water Board from recommendations made by the cooperating agencies. Cooperating agencies are the Utah Department of Environmental Quality, the Utah League of Cities and Towns, the Training Coordinating Committee of Utah, the Intermountain Section of the American Water Works Association, the Civil or Environmental Engineering Departments of Utah's Universities, and the Rural Water Association of Utah.

2. The Commission is charged with the responsibility of conducting all work necessary to promote the program, recommend certification of operators, and oversee the maintenance of records.

3. The Commission shall consist of seven members as follows:

(a) One member shall be a certified operator from a town having a population under 10,000 and will be nominated by the Rural Water Association of Utah.

(b) One member shall be at least a grade III unrestricted certified distribution operator and will be nominated by the American Water Works Association.

(c) One member shall be at least a grade III unrestricted certified water treatment plant operator and will be nominated by the American Water Works Association.

(d) One member shall represent municipal water supply management and will be nominated by the Utah League of Cities and Towns.

(e) One member shall represent the civil or environmental engineering department of a Utah university cooperating with the certification program.

(f) One member shall represent water supply trainers and will be nominated by the Training Coordinating Committee (TCC).

(g) One member shall be a representative for the Drinking Water Board.

4. Each group represented shall designate its nominee to the Drinking Water Board for a three-year term. Nominations may be accepted or rejected by the Drinking Water Board. Persons may be renominated for successive three-year terms by their sponsor groups. The Executive Secretary for the Drinking Water Board shall notify the sponsoring groups one year in advance of the termination of the Commission member that a nominee will be needed. The initial Commission at its first meeting will draw lots corresponding to one, two, and three-year terms. Thereafter, all Commission member terms will be for three years on a staggered replacement basis. An appointment to succeed a Commission member who is unable to serve his full term shall be only for the remainder of the unexpired term and shall be submitted by the sponsor groups and approved by the Drinking Water Board as mentioned above.

5. Each year the Commission shall elect from its membership a chairperson and vice-chairperson and such other officers as may be needed to conduct its business.

6. It shall be the duty of the Commission to advise in the preparation of examinations for various grades of operators and advise on the certification criteria used by the Secretary. In addition to these duties, the Commission shall also advertise and promote the program, distribute applications and notices, maintain a register of certified Operators and Specialists, set examination dates and locations, and make recommendations regarding each drinking water system's compliance with these rules.

~~[R309-301-16.]R309-300-17. Secretary to the Commission.~~

The Executive Secretary of the Drinking Water Board shall designate a non-voting member of the Commission to serve as its Secretary, who shall be a senior public health representative from the Division of Drinking Water. This Secretary shall serve to coordinate the paperwork for the Commission and to bring issues before the Commission. His duties consist of the following:

1. acting as liaison between the Commission and the water suppliers, and generally promote the program;

2. maintaining records necessary to implement these rules;

3. classifying all water treatment plants and distribution systems;

4. notifying sponsor groups of Commission nominations needed;

5. coordinating with Utah's Training Coordinating Committee (TCC) to ensure adequate operator training opportunities throughout the state;

6. serving as a source of public information for operator training opportunities and certified operators available for employment;

7. receiving applications for certification and screen, investigate, verify and evaluate all applications received consistent with policies set by the Board and Commission;

8. bringing issues to the Commission for their review;

9. developing and administering operator certification examinations.

~~[R309-301-17.]R309-300-18. Non-compliance with Certification Program.~~

1. After appropriate consideration by the Commission, cases of non-compliance will be referred to the Drinking Water Board for appropriate enforcement action.

2. Non-compliance with the certification rules is a violation of R309-102-8. Whenever such a violation occurs, the water system management will be notified in writing by the Division of Drinking Water and will be required to correct the situation.

~~[R309-301-18. Water Treatment Classification System]R309-300-19. Drinking Water System Classification.~~

This system applies only to those public water supplies operating coagulation and/or filtration treatment plants. This classification system does not apply to those systems operating only chlorination facilities on distribution systems.

TABLE 2

Size	Item	Points
	Maximum population served, peak day	1 pt. per 5,000 or part thereof
	Design flow (avg. day) or peak month's	1 pt. per MGD or part thereof
Water Supply Source	Groundwater	3
	Surface water	5
	Average raw water quality (0 to 10)	0
	Little or no variation	
	Raw water quality (other than turbidity) varies enough to require treatment changes less than 10% of the time	2
	Raw water quality including turbidity varies often enough to require frequent changes in the treatment process	5
Raw water quality is subject to major changes and may be subject to periodic serious pollution	10	

Aeration for with CO2	2
pH adjustment	4
Packed tower aeration	6
Stability or corrosion control	4
Taste and odor control	8
Color control	4
Treatment	
Iron or Iron/Mn, removal	10
Ion exchange softening	10
Chemical precipitation softening	20
Coagulant addition	4
Flocculation	6
Sedimentation	5
Upflow clarification	14
Filtration	10
Disinfection (0-10)	
No disinfection	0
Chlorination or comparable	5
On-site generation of disinfectant	5
Special processes (including reverse osmosis, electro-dialysis, etc.)	15
Sludge/backwash water disposal (0-5)	
No disposal to raw water source	0
Any disposal to raw water source	2
Any disposal to plant raw water	5
Laboratory control (0-10)	
Biological (0-10)	
All lab work done outside of plant	0
Colilert process	2
Membrane filter	3
Multiple tube of fecal determination	5
Biological identification	7
Viral studies or similarly complex work done on-site	10
Chemical/physical	
All lab work done outside of plant	0
Push button or colorimetric methods such as chlorine residual or pH	3
Additional procedures such as titrations or jar tests	5
More advanced determinations such as numerous organics	7
Highly sophisticated instrumentation such as atomic absorption or gas chromatography	10

TABLE 3
SUMMARY OF UTAH
WATER UTILITY CLASSIFICATION SYSTEM
WATER TREATMENT PLANT CLASSIFICATION

Grade	1	2	3	4
Population served	1500 or less	1501-5000	5001-15,000	over 15,000
Water plant points	0-40	41-65	66-90	91-UP

TABLE 4
SUMMARY OF UTAH
WATER UTILITY CLASSIFICATION SYSTEM
DISTRIBUTION CLASSIFICATION

[Grade	1	2	3	4
Population served	1500 or less	1501-5000	5001-15,000	over 15,000
Water plant points	0-10	10-25	26-50	51-UP
Grade Small System	1	2	3	4
Population served	500 or less	501 to 1500	1501 to 5000	5001 to over 15,000
Distribution points	0-10	0-10	10-25	26-50 51-UP

Distribution systems are those which use groundwater sources (springs and wells) and which may or may not use chlorination. Classification will generally be made in accordance with the following ~~five~~^{four} classes. The Commission may change the classification of a particular distribution system when there are unusual factors affecting the complexity of transmission, mixing of sources, or potential health hazards.

TABLE 5
MINIMUM REQUIRED QUALIFICATIONS FOR
UTAH WATERWORKS OPERATORS

EDUCATION				EXPERIENCE Direct		
Certification Grade (Both Dist. and Treatment)	Degree	Assoc. Degree	High School	Non High School	Respon. Charge Years	Total Years
		X			2	4
		X	X		2	6
4			X		4	8
				X	5	10
	X				1	2
		X			1	2
			X		2	4
				X	3	6
	X				0	2
		X			0	2
			X		0	2
				X	0	3
	X				0	1
		X			0	1
1 and Small System			X		0	1
				X	0	1

Note:
(1) Experience requirements apply to all operators except those who have been issued "grandparent" [~~grandfather~~] certificates.
(2) At least one half of all experience must be gained at the grade of certification desired.

TABLE 6
Minimum Certification Qualifications
For Water System Specialists

CERTIFICATION GRADE (both Distribution and Treatment)	EXPERIENCE	
	"Hands On" Experience (Years)	Design or Associated Experience (Years)
4	8	10
3	4	8
2	2	4
1	0	0

Note:

1. All experience must be verifiable.
2. All "hands on" experience must be in the area of operation, repair, and maintenance of a public drinking water system.
3. Associated experience may be in the design, construction, and inspection of public drinking water systems and/or direct consultation for public drinking water systems.
4. The required experience, as outlined above, must be either in the "Hands On" category or in the Design or Associated category, not in combination.
5. Persons applying for and passing the specialist exam who do not meet the minimum qualifications will be issued a restricted certificate similar to the water system operator restricted certificate.
6. Restricted Specialist Certificate shall be changed to unrestricted status upon written request of certificate holder after minimum experience qualifications have been met.

KEY: drinking water, environmental protection, administrative procedure

~~1994~~2000

Notice of Continuation April 10, 1997

19-4-104

63-46b-4

Environmental Quality, Water Quality
R317-1-3
Requirements for Waste Discharges

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23164

FILED: 09/15/2000, 14:03

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Allow higher effluent discharge standards for discharging domestic wastewater lagoons

SUMMARY OF THE RULE OR CHANGE: Allows discharging domestic wastewater lagoons to have effluent discharge limits up to 45 mg/l (30-day average) and 65 mg/l (7-day average) for BOD₅ and/or TSS.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No appreciable costs or savings. This change does not result in a need for additional full time equivalents (FTEs).

❖LOCAL GOVERNMENTS: Substantial savings due to avoiding potential enforcement actions and the reduced need to construct additional treatment processes to meet more stringent discharge limits. Potential savings could be in the hundreds of thousands of dollars over time.

❖OTHER PERSONS: No direct costs to other persons. This rule only affects Publicly Owned Treatment Works.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will not result in an increased cost for the regulated community. Rather a savings will be realized.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will result in a reduction of potential costs to the regulated community.

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

Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Tim Beavers at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6016, or by Internet E-mail at tbeavers@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 10/24/2000, 1:30 p.m., Cannon Health Bldg, 288 North 1460 West, Room No. 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/20/2000

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. Environmental Quality, Water Quality.

R317-1. Definitions and General Requirements.

R317-1-3. Requirements for Waste Discharges.

3.1 Deadline For Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State on the effective date of these regulations shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards) as soon as practicable but not later than June 30, 1983, except that the Board may, on a case-by-case basis, allow an extension to the deadline for compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement

would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Deadline For Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period. Exceptions to this requirement may be allowed by the Board on a case-by-case basis where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed on a case-by-case basis where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above on a case-by-case basis where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow on a case-by-case basis that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. Monitoring data show that the lagoon system consistently produces effluent with BOD5 and/or TSS in excess of Utah Secondary Treatment Standards,

2. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

3. The lagoon system is being properly operated and maintained,

4. The treatment system is meeting all other permit limits,

5. There are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

6. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream,

7. These alternate requirements may be renewed with the discharge permit renewal.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions on a case-by-case basis to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

KEY: water pollution, waste disposal, industrial waste, effluent standards*

~~June 13,~~ 2000

19-5

Notice of Continuation December 12, 1997



Environmental Quality, Water Quality

R317-4

Onsite Wastewater Systems

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23163

FILED: 09/15/2000, 13:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Administrative Rules Review Committee has questioned requirements for soil testing (one test per lot) to show feasibility for new Subdivisions. This rulemaking is a response to that concern. Flexibility will be given to the local health departments to allow less than one soil test per lot.

SUMMARY OF THE RULE OR CHANGE: Language is inserted in Subsection R317-4-3(3.3)(K)(3) to provide that local health departments may allow fewer soil tests than one per lot, based on the uniformity of prevailing soil and ground water characteristics and available percolation data, in determining wastewater disposal feasibility for proposed subdivisions. Also, a correction is being made to a footnote to Table 2 found under Subsection R317-4-4(4.3), separation distances, to remove a phrase which was inadvertently inserted during the previous rulemaking.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: Increased costs in consultation with local health departments of approximately \$2,000 per year.
 - ❖LOCAL GOVERNMENTS: No net change anticipated. Some additional work will be required to make decisions on whether fewer than one soil test per lot should be allowed; however, this will be offset in these cases since the local health department will have far less data to be reviewed to make feasibility decisions.
 - ❖OTHER PERSONS: Developers proposing subdivisions and who qualify for the waiver for soil testing, will realize a savings of approximately \$50 to \$500 per soil test not performed. For example, if only one test per three lots is required, rather than one per lot, the savings could be in the range of \$150 to \$1,500 for every three lots in the subdivision. On the other hand, if a person who buys a lot and then finds that a conventional subsurface disposal system cannot be located on the lot (because a soil test had not previously been done on that lot before it was purchased), a cost increase of approximately \$5,000 would be incurred by the lot owner to build an alternate disposal system, if a system could be installed at all.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs. Cost savings will be realized by subdivision developers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule amendment will result in a cost savings to businesses.

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

Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kiran Bhayani at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6016, or by Internet E-mail at kbhayani@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO

LATER THAN 5:00 P.M. ON 10/31/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 10/24/2000, 1:30 p.m., Cannon Health Building, 288 North 1460 West, Room No. 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/20/2000

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. Environmental Quality, Water Quality.
R317-4. Onsite Wastewater Systems.

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R317-4-3. Onsite Wastewater Systems General Requirements.

3.1. Units Required in an Onsite Wastewater System. The onsite wastewater system shall consist of the following components:

- A. A building sewer.
- B. A septic tank.
- C. An absorption system. This may be a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit or pits, an absorption bed, or alternative or experimental systems as specified in this rule, depending on location, topography, soil conditions and ground water table.

3.2. Multiple Dwelling Units. Multiple dwelling units under individual ownership, except condominiums, shall not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the Utah Water Quality Board. Issuance of a construction permit by the Board shall constitute approval of plans and authorization for construction.

3.3. Review Criteria for Establishing Onsite Wastewater System Feasibility of Proposed Housing Subdivisions and Other Similar Developments. The local health department will review plans for proposed subdivisions and other similar developments for wastewater permit feasibility, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority. A plan of the subdivision shall be submitted to the local health department for review and shall be drawn to such scale as needed to show essential features. Ground surface contours must be included, preferably at two-foot intervals unless smaller intervals are necessary to describe existing surface conditions. Intervals larger than two feet may be authorized on a case-by-case basis where it can be shown that they are adequate to describe all necessary terrain features. The plan must be specifically located with respect to the public land survey of Utah. A vicinity location map, preferably a U.S. Geological Survey 7-1/2 or 15 minute topographic map, shall be provided with the plan for ease in locating the subdivision area. A narrative feasibility report addressing the short-range and long-range water supply and wastewater system facilities proposed to serve the development must be submitted for review. The feasibility report shall include the following information:

- A. Name and location of proposed development.
- B. Name and address of the developer of the proposed project and the engineer or individual who submitted the feasibility report.

C. Statement of intended use of proposed development, such as residential-single family, multiple dwellings, commercial, industrial, or agricultural.

D. The proposed street and lot layout, the size and dimensions of each lot and the location of all water lines and easements, and if possible, the areas proposed for sewage disposal. All lots shall be consecutively numbered. The minimum required area of each lot shall be sufficient to permit the safe and effective use of an onsite wastewater system and shall include a replacement area for the absorption system. Plans used for multiple dwellings, commercial, and industrial purposes will require a study of anticipated sewage flows prior to developing suitable area requirements for sewage disposal.

E. Ground surface slope of areas proposed for onsite wastewater systems shall conform with the requirements of R317-4-4.

F. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

G. The locations of all rivers, streams, creeks, washes (dry or ephemeral), lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, within or adjacent to the area to be planned, and cutting or filling of lots that will affect building sites. Areas proposed for onsite wastewater systems shall be isolated from pertinent ground features as specified in Table 2.

H. Surface drainage systems shall be included on the plan, as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the surface drainage system shall show that the surface drainage structures, whether ditches, pipes, or culverts, will be adequate to handle all surface drainage so that it in no way will affect onsite wastewater systems on the property. Details shall also be provided for the final disposal of surface runoff from the property.

I. If any part of a subdivision lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".

J. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat. All soil tests shall be conducted at the owner's expense.

K. A report by an engineer, geologist, or other person qualified by training and experience to prepare such reports must be submitted to show a comprehensive log of soil conditions for each lot proposed for an onsite wastewater system.

1. A sufficient number of soil exploration pits shall be dug on the property to provide an accurate description of subsurface soil conditions. Soil description shall conform with the United States Department of Agriculture soil classification system. Soil exploration pits shall be of sufficient size to permit visual inspection, and to a minimum depth of ten feet, and at least four feet below the bottom of proposed absorption systems. One end of each pit should be sloped gently to permit easy entry if necessary. Deeper soil exploration pits are required if deep absorption systems, such as deep wall trenches or seepage pits, are proposed.

2. For each soil exploration pit, a log of the subsurface formations encountered must be submitted for review which describes the texture, structure, and depth of each soil type, the depth of the ground water table if encountered, and any indications of the maximum ground water table.

3. Soil exploration pits and percolation tests shall be made at the rate of at least one test per lot. The local health department may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation test data. Percolation tests shall be conducted in accordance with R317-4-5. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review. Soil exploration pits and percolation tests must be conducted as closely as possible to the absorption system sites on the lots or parcels. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. Complete results shall be submitted for review, including all unacceptable test results. Absorption systems are not permitted in areas where the requirements of R317-4-5 cannot be met or where the percolation rate is slower than 60 minutes per inch or faster than one minute per inch. Where soil and other site conditions are clearly unsuitable, there is no need for conducting soil exploration pits or percolation tests.

L. A statement by an engineer, geologist, or other person qualified by training and experience to prepare such statements, must be submitted indicating the present and maximum ground water table throughout the development. If there is evidence that the ground water table ever rises to less than two feet from the bottom of the proposed absorption systems, onsite wastewater absorption systems will not be approved. Ground water table determinations must be made in accordance with R317-4-5.

M. If ground surface slopes exceed four percent, or if soil conditions, drainage channels, ditches, ponds or watercourses are located in or near the project so as to complicate design and location of an onsite wastewater systems, a detailed system layout shall be provided for those lots presenting the greatest design difficulty. A typical lot layout will include, but not be limited to the following information, and shall be drawn to scale:

1. All critical dimensions and distances for the selected lot(s), including the distance of the onsite wastewater system from lakes, ponds, watercourses, etc.

2. Location of dwelling, with distances from street and property lines.

3. Location of water lines, water supply, onsite wastewater system, property lines, and lot easements.

4. Capacity of septic tank and dimensions and cross-section of absorption system.

5. Results and locations of individual soil exploration pits and percolation tests conducted on the selected lot(s).

6. If nonpublic wells or springs are to be provided, the plan shall show a typical lot layout indicating the relative location of the building, well or spring, and onsite wastewater system.

N. If proposed developments are located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface sewage flow.

O. Excessively Permeable Soil and Blow Sand. Soil having excessively high permeability, such as cobbles or gravels with little fines and large voids, affords little filtering action to effluents flowing through it and may constitute grounds for rejection of sites. The extremely fine-grained "blow sand" (aeolian sand) found in some parts of Utah is unsuitable for absorption systems, and onsite wastewater system for installation in such blow sand conditions shall not be approved. This shall not apply to lots which have received final local health department approval prior to the effective date of this rule.

1. Percolation test results in blow sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots which are exempt as described above, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of the minimum acceptable percolation rate (60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 30 minutes per inch for absorption beds).

2. Prohibition of Onsite Wastewater Systems. If soil studies described in the foregoing paragraphs indicate conditions which fail in any way to meet the requirements specified herein, the use of onsite wastewater systems in the area of study will be prohibited.

P. After review of all information, plans, and proposals, the regulatory authority will send a letter to the individual who submitted the feasibility report stating the results of the review or the need for additional information. An affirmative statement of feasibility does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum State requirements and any conditions that may be imposed.

3.4. Submission, Review, and Approval of Plans for Onsite Wastewater Systems.

A. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive domestic wastewater, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, shall be submitted to, and approved by the local health department having jurisdiction before construction of either the onsite wastewater system or building to be served by the onsite wastewater system may begin. Details for said site, plans, and specifications are listed in R317-4-4.

B. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive nondomestic wastewater shall be submitted to and approved by the Division of Water Quality.

C. The local health department having jurisdiction, or the Division, shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, written approval shall be issued to the individual making the submittal and the plans shall be stamped indicating approval. Construction shall not commence until the

plans have been approved by the regulatory authority. The installer shall not deviate from the approved design without the approval of the reviewing regulatory authority.

D. Depending on the individual site and circumstances, or as determined by the local board of health some or all of the following information may be required. Compliance with these rules must be determined by an on-site inspection after construction but before backfilling. Onsite wastewater systems must be constructed and installed in accordance with these rules.

E. In order that approval can be expedited, plans submitted for review must be drawn to scale (1" = 8', 16', etc. but not exceed 1" = 30'), or dimensions indicated. Plans must be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Plan information that may be required is as follows:

1. Plot or property plan showing:
 - a. Date of application.
 - b. Direction of north.
 - c. Lot size and dimensions.
 - d. Legal description of property if available.
 - e. Ground surface contours (preferably at two-foot intervals) of both the original and final (proposed) grades of the property, or relative elevations using an established bench mark.
 - f. Location and dimensions of paved and unpaved driveways, roadways and parking areas.
 - g. Location and explanation of type of dwelling to be served by an onsite wastewater system.
 - h. Maximum number of bedrooms (including statement of whether a finished or unfinished basement will be provided), or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.
 - i. Location and dimensions of the essential components of the onsite wastewater system.
 - j. Location of soil exploration pit(s) and percolation test holes.
 - k. Location of building sewer and water service line to serve dwelling.
 1. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.
 - m. Distance to nearest public water main and size of main.
 - n. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.
 - o. Location of easements or drainage right-of-ways affecting the property.
 - p. Location of all streams, ditches, watercourses, ponds, subsurface drains, etc., (whether intermittent or year-round) within 100 feet of proposed onsite wastewater system.
 2. Statement of soil conditions obtained from soil exploration pit(s) dug (preferably by backhoe) to a depth of ten feet in the absorption system area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than six feet, soil exploration pits must extend to a depth of at least four feet below the bottom of the proposed absorption system excavation. One end of each pit should be sloped gently to permit easy entry if necessary. Whenever possible data from published soil studies of the site should also be submitted. Soil logs should be prepared in

accordance with the United States Department of Agriculture soil classification system.

3. Statement with supporting evidence indicating (A) present and (B) maximum anticipated ground water table and (C) flooding potential for onsite wastewater system site.

4. The results of at least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, in the area of the proposed absorption system, conducted according to R317-4-5. Percolation tests should be conducted at a depth of six inches below the bottom of the proposed absorption system excavation and test results should be submitted on a "Percolation Test Certificate" obtainable upon request. If a deep wall trench or seepage pit is proposed, a completed "Deep Wall Trench Construction Certificate" may be submitted if percolation tests are not required.

5. Relative elevations (using an established bench mark) of the:

- a. Building drain outlet.
- b. The inlet and outlet inverts of the septic tank(s).
- c. The outlet invert of the distribution box (if provided) and the ends or corners of each distribution pipe lateral in the absorption system.
- d. The final ground surface over the absorption system.
- e. Septic tank access cover, including length of extension, if used.

6. Schedule or grade, material, diameter, and minimum slope of building sewer.

7. Septic tank capacity, design (cross sections, etc.), materials, and dimensions. If tank is commercially manufactured, state name and address of manufacturer.

8. Details of drop boxes or distribution boxes (if provided)
9. Absorption system details which include the following:
 - a. Schedule or grade, material, and diameter of distribution pipes.
 - b. Required and proposed area for absorption system.
 - c. Length, slope, and spacing of each distribution pipeline.
 - d. Maximum slope across ground surface of absorption system area.

e. Slope of distribution pipelines (maximum slope four inches/100 feet., level preferred)

f. Distance of distribution pipes from trees, cut banks, fills or other subsurface disposal systems.

g. Type and size of filter material to be used (must be clean, free from fines, etc.).

- h. Cross section of absorption system showing:
 - i. Depth and width of absorption system excavation.
 - ii. Depth of distribution pipe.
 - iii. Depth of filter material.
 - iv. Barrier (i.e., synthetic filter fabric, straw, etc.) used to separate filter material from backfill.
 - v. Depth of backfill.

10. Schedule or grade, type, and capacity of sewage pump, pump well, discharge line, siphons, siphon chambers, etc., if required as part of the onsite wastewater system.

11. Statement indicating (A) source of water supply for dwelling (whether a well, spring, or public system) and (B) location and (C) distance from onsite wastewater disposal system. If plan

approval of a nonpublic water supply system is desired, information regarding that system must be submitted separately.

12. Complete address of dwelling to be served by this onsite wastewater system. Also the name, current address, and telephone number of:

a. The person who will own the proposed onsite wastewater system.

b. The person who will construct and install the onsite wastewater system.

c. If mortgage loan for dwelling is insured or guaranteed by a federal agency, the name and local address of that agency.

F. All applicants requesting plan approval for an onsite wastewater system must submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

G. Applications will be rejected if proper information is not submitted.

3.5. Final On-Site Inspection.

A. After an onsite wastewater system has been installed and before it is backfilled or used, the entire system shall be inspected by the appropriate regulatory authority to determine compliance with these rules. For deep wall trenches and seepage pits, the regulatory authority should make at least two inspections, with the first inspection being made following the excavation and the second inspection after the trench or pit has been filled with stone or constructed, but before any backfilling has occurred.

B. Each septic tank shall be tested for water tightness before backfilling in accordance with the requirements and procedure outlined in the American Society for Testing Materials' Standard ASTM C-1227, or concrete tanks should be filled 24 hours before the inspection to allow stabilization of the water level. During the inspection there shall be no change in the water level for 30 minutes. Nor shall moving water, into or out of the tank, be visible. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to three inches below the joint to provide adequate support to the seam of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

3.6. Appeals. The appeals process for this rule is outlined in R317-1-8.

R317-4-4. Onsite Wastewater Systems Design Requirements.

4.1. Site Location and Installation.

A. Onsite wastewater systems are not suitable for all areas and situations. Location and installation of each system, or other approved means of disposal, shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the State. Systems shall be located on the same lot as the building served unless, when approved by the regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of an onsite wastewater system, to include all rights to ingress and egress necessary or convenient for

the full or complete use, occupation, and enjoyment of the granted easement. The easement must accommodate the entire onsite wastewater system, including setbacks (see Table 2) which extend beyond the property line.

B. In determining a suitable location for the system, due consideration shall be given to such factors as: size and shape of the lot; slope of natural and finished grade; location of existing and future water supplies; depth to ground water and bedrock; soil characteristics and depth; potential flooding or storm catchment; possible expansion of the system, and future connection to a public sewer system.

4.2. Lot Size Requirements.

A. One of the following two methods shall be used for determining minimum lot size for a single-family dwelling when an onsite wastewater system is to be used:

METHOD 1:-The local health department having jurisdiction may determine minimum lot size. Individuals or developers requesting lot size determinations under this method will be required to submit to the local health department, at their own expense, a report which accurately takes into account, but is not limited to, the following factors:

- A. Soil type and depth.
- B. Area drainage, lot drainage, and potential for flooding.
- C. Protection of surface and ground waters.
- D. Setbacks from property lines, water supplies, etc.
- E. Source of culinary water.
- F. Topography, geology, hydrology and ground cover.
- G. Availability of public sewers.
- H. Activity or land use, present and anticipated.
- I. Growth patterns.
- J. Individual and accumulated gross effects on water quality.
- K. Reserve areas for additional subsurface disposal.
- L. Anticipated sewage volume.
- M. Climatic conditions.
- N. Installation plans for wastewater system.
- O. Area to be utilized by dwelling and other structures.

Under this method, local health departments may elect to involve other affected governmental entities and the Division in making joint lot size determinations. The Division will develop technical information, training programs, and provide engineering and geohydrologic assistance in making lot size determinations that will be available to local health departments upon their request.

METHOD 2:-Whenever local health departments do not establish minimum lot sizes for single-family dwellings that will be served by onsite wastewater systems, the requirements of Table 1 shall be met:

TABLE 1
Minimum Lot Size(a)

WATER SUPPLY	SOIL TYPE				
	1	2	3	4	5
Public(b)	12,000 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	--
Individual each lot(c)	1 acre	1.25 acres	1.5 acres	1.75 acres	--

SOIL TYPE	DRAINAGE	PERCOLATION RATE(d)(e)	APPROXIMATE SOIL CLASSIFICATION SYMBOL (USDA Soil Classification System)(e)(f)
1	Good	1-15	Sand, Loamy Sand
2	Fair	16-30	Sandy Loam, Loam
3	Poor	30-45	Loam, Silty Loam
4	Marginal	46-60	Sandy Clay Loam, Silty Clay Loam, (g).
5	Unacceptable (h)		Clay Loam, Clay Bedrock, fractured bedrock, hardpan, (including unacceptable ground water table elevations)

FOOTNOTES

(a) Excluding public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building lot for a single-family dwelling. These minimum lot size requirements shall not apply to building lots which have been recorded or have received final local health department approval prior to May 21, 1984. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the minimum lot size requirements if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded and other approved lots, the minimum lot size requirements are applicable if compelling or countervailing public health interests would necessitate application of these more stringent requirements. The shape of the lot must also be acceptable to the regulatory authority.

(b) This category shall also include lots served by a nonpublic water source that is not located on the lots.

(c) See the isolation requirements in Table 2.

(d) When deep wall trenches or seepage pits will be used, the percolation test may be estimated by a qualified person in accordance with R317-4-9.

(e) When there is a substantial discrepancy between the percolation rate and the approximate soil classification, it shall be resolved to the satisfaction of the regulatory authority, or the soil type requiring the largest lot shall be used.

(f) See Table 10 for a more detailed description of the USDA soil classification system.

(g) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

(h) Faster than one minute per inch, slower than 60 minutes per inch, or unsuitable soil formations.

B. Determination of minimum lot size by Methods 1 and 2 would not preempt local governments from establishing larger minimum lot sizes.

C. Available pertinent land for construction of other than single-family dwellings should have a minimum net available area in the amount of 22 square feet per gallon of estimated sewage computed from the fixture unit values established by Table 3 or other acceptable methods. Each fixture unit should be rated at not less than 25 gallons per day. One-half of this pertinent land area should be available for the absorption system.

4.3. Isolation of Onsite Wastewater Systems. Minimum distances between components of an onsite wastewater disposal system and pertinent ground features shall be as prescribed in Table 2.

TABLE 2
Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Building Sewer	to Septic Tank				
			Non-culinary Well or Spring	100	100	100
			Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	100(f)	100(f)	100(f)
			Lake, Pond, Reservoir	100	100	100
			Culinary Water Supply Line	10(g)	10(g)	10(g)
Public Water Supply Sources			Foundation of any building including garages and outbuildings:			
Protected Aquifer Well (c)	100	100	without foundation drains	5	20	5
Unprotected Aquifer Well (c)	(d)	(d)	with foundation drains	100	100	100
Spring (c)	(d)	(d)	Curtain drains			
Individual or Nonpublic Water Supply Sources			located up gradient	20	20	20
Grouted Well (k)	25	50	located down gradient	100	100	100
Ungouted Well (k)	25	50	Property line	5	10	10
Spring (c)	25	50	Swimming pool wall (subsurface)	25	25	25
Non-culinary Well or Spring	--	25	Downslope cut bank or top of embankment	50	50	50
Watercourse (live or ephemeral stream, river, subsurface drain canal, etc.)	--	25	Dry washes, gulches, and gullies	50	50	50
Lake, Pond, Reservoir	--	25	Catch basin or dry well	25	25	25
Culinary Water Supply Line	(g)	10	Trees and shrubs (h)	5	5	5
Foundation of any building including garages and outbuildings:			Deep Wall Trench (b)	10	(i)	10
without foundation drains	3	5	Absorption Bed	10	10	10
with foundation drains	3	25	Standard Trench	(j)	10	10
Curtain drains						
located up gradient	--	10				
located down gradient	10	25				
Property line	5	5				
Swimming pool wall (subsurface)	3	10				
Downslope cut bank or top of embankment	--	10				
Dry washes, gulches, and gullies	--	25				
Catch basin or dry well	--	5				
Trees and shrubs (h)	--	--				
Deep Wall Trench (b)	--	5				
Absorption Bed	--	5				
Standard/Chamber Trench	--	5				

FOOTNOTES

(a) All distances are from edge to edge ~~and on the same property~~. Where surface waters are involved, the distance shall be measured from the high water line.

(b) Seepage pits shall meet the same separation distances specified for deep wall trenches, except that seepage pits shall be separated from one another by at least a distance equal to 3 times the greatest diameter of either pit, with a minimum separation of 15 feet.

(c) As defined by R309-113-6. Distances to avoid contamination cannot always be predicted for varying conditions of soil or underlying bedrock and ground water. Absorption systems should be located as far away from wells, springs, and other water supplies as is practicable, and not on a direct slope above them. Compliance with separation requirements does not guarantee acceptable water quality in every instance. This is particularly applicable with shallow sources of ground water. Where geological or other conditions warrant, greater distances may be required by the regulatory authority.

(d) It is recommended that the listed concentrated sources of pollution be located at least 1500 feet or as required by the Drinking Water Source Protection rules, from unprotected aquifer wells and springs used as public water sources. Any proposal to locate closer than 1500 feet from the property line must be reviewed and approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an onsite wastewater system closer than 1500 feet to a public unprotected aquifer well or spring must submit a report to the regulatory authority which considers the above items. The minimum required isolation distance where optimum conditions exist and with the approval of the regulatory authority may be 100 feet. R309-113 requires a protective zone, established by the public water supply owner, before a new source is approved.

Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Standard Trench	to Deep Wall Trench	to Absorption Bed
Public Water Supply Sources			
Protected Aquifer Well (c)	100	100	100
Unprotected Aquifer Well (c)	(d)	(d)	(d)
Spring (c)	(d)	(d)	(d)
Individual or Nonpublic Water Supply Sources			
Grouted Well (k)	100	100	100
Ungouted Well (k)	200(e)	200(e)	200(e)
Spring (c)	200(e)	200(e)	200(e)

Public water sources which existed prior to the requirement for a protective zone may not have acquired one. Such circumstances must be reviewed by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source.

(e) Although this distance shall be generally adhered to as the minimum required separation distance, exceptions may be approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an absorption system closer than 200 feet to an individual or nonpublic ungrouted well or spring must submit a report to the regulatory authority which considers the above items. In no case shall the regulatory authority grant approval for an onsite wastewater system to be closer than 100 feet from an ungrouted well or a spring.

(f) Lining or enclosing watercourses with an acceptable impervious material may permit a reduction in the separation requirement. In situations where the bottom of a canal or watercourse is at a higher elevation than the ground in which the absorption system is to be installed, a reduction in the distance requirement may be justified, but each case must be decided on its own merits by the regulatory authority.

(g) If the water supply line is for a public water supply, the separation distance must comply with the requirements of R309. No water service line shall pass over any portion of an onsite wastewater system.

(h) Components which are not watertight should not extend into actual or anticipated root systems of nearby trees. Trees and other large rooted plants shall not be allowed to grow over onsite wastewater systems. However, it is desirable to cover the area over onsite wastewater systems with lawn grass or other shallow-rooted plants. Onsite wastewater systems should not be located under vegetable gardens.

(i) For deep wall trenches, the separation distance must be at least equal to 3 times the deepest effective depth of either trench with a minimum separation of 12 feet between trenches.

(j) See R317-4-9, Table 9.

(k) A grouted well is a well constructed as required in the drinking water rules R309.

4.4. Estimates of Wastewater Quantity. Quantity of wastewater to be disposed of shall be determined accurately, preferably by actual measurement. Metered water supply figures for similar installations can usually be relied upon, providing the nondisposable consumption, if any, is subtracted. Where this data is not available, the minimum design flow figures in Table 3 shall be used to make estimates of flow. In no event shall the septic tank or absorption system be designed such that the anticipated maximum daily sewage flow exceeds the capacity for which the system was designed.

TABLE 3
Estimated Quantity of Domestic Wastewater(a)

Type of Establishment	Gallons per day
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50 per person
b. additional for each nonresident boarders	10 per person
Bowling Alleys	
a. with snack bar	100 per alley
b. with no snack bar	85 per alley

Camps	
a. modern camp	30 per person
b. semi-developed with flush toilets	30 per person
c. semi-developed with no flush toilets	5 per person
Churches	
a. per person	5
Condominiums, Multiple Family Dwellings, or Apartments	
a. with individual or common laundry facilities	400 per unit
b. with no individual or common laundry facilities	75 per person
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds	1 per person
Fire Stations	
a. with full-time employees and food preparation	70 per person
b. with no full-time employees and no food preparation	5 per person
Gyms	
a. participant	25 per person
b. spectator	4 per person
Hairdresser	
a. per chair	50
b. per operator	35
Highway Rest Stops (improved, with restroom facilities)	5 per vehicle
Hospitals	250 per bed space
Hotels, Motels, and Resorts	125 per unit
Industrial Buildings (exclusive of industrial waste)	
a. with showers, per 8 hour shift	35 per person
b. with no showers, per 8 hour shift	15 per person
Labor or Construction Camps	50 per person
Launderette	580 per washer
Mobile Home Parks	400 per unit
Movie Theaters	
a. auditorium	5 per seat
b. drive-in	10 per car space
Nursing Homes	200 per bed space
Office Buildings and Business Establishments (Sanitary wastes only, per shift)	
a. with cafeteria	25 per employee
b. with no cafeteria	15 per employee
Picnic Parks (toilet wastes only)	5 per person
Restaurants(b)	
a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Recreational Vehicle Parks	
a. sanitary stations for self-contained vehicles	50 per space
b. dependent spaces (temporary or transient with no sewer connections)	50 per space

c. independent spaces (temporary or transient with sewer connections)	125 per space
Rooming House	40 per person
Sanitary Stations (per self-contained vehicle)	50
Schools	
a. boarding	75 per person
b. day, without cafeteria, gymnasiums or showers	15 per person
c. day, with cafeteria, but no gymnasiums and showers	20 per person
d. day, with cafeteria, gymnasium and showers	25 per person
Service Stations(c) (per vehicle served)	10
Single-Family Dwellings	(See Tables 7, 10, and 13)
Skating Rink, Dance Halls, etc.	
a. no kitchen wastes	10 per person
b. additional for kitchen wastes	3 per person
Ski Areas	
a. no kitchen wastes	10 per person
b. Additional for kitchen wastes	3 per person
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses(d)	10 per person
Taverns, Bars, Cocktail Lounges	20 per seat
Visitor Centers	5 per visitor

FOOTNOTES

(a) When more than one use will occur, the multiple use shall be considered in determining total flow. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established flows from known or similar installations.

(b) No commercial food waste disposal unit shall be connected to an onsite wastewater system unless first approved by the regulatory authority.

(c) Or, 250 gallons per day per pump.

(d) Or, 20 x water area + deck area.

4.5. Installation in Sloping Ground.

A. Construction of absorption systems on slopes in excess of 15 percent but not greater than 25 percent may be allowed providing that subsoil profiles indicate no restrictive layers of soil and appropriate engineering design is provided. Absorption systems placed in sloping ground shall be so constructed that there is a minimum of 10 feet of undisturbed earth measured horizontally from the bottom of the distribution line to the ground surface. Where the addition of fluids is judged to create an unstable slope, absorption systems will be prohibited.

B. Absorption systems shall be so located and constructed that there is a minimum of 50 feet from downhill slopes that exceed 35 percent.

C. Alternative systems shall be subject to the site slope limits specified in R317-4-11 for earth fill, "at-grade" systems and in mound systems.

4.6. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for 100 percent replacement of each absorption system. If approved by the regulatory authority, the area between standard trenches or deep wall trenches may be regarded as replacement area.

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KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks
[February 16, 2000 19-5-104

◆ ————— ◆

Environmental Quality, Water Quality **R317-7** Underground Injection Control (UIC) Program

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE No.: 23162
 FILED: 09/15/2000, 13:54
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In order to maintain Primacy in the Utah Underground Injection Control (UIC) Program, Utah's UIC rules must be changed so they are equivalent to the Environmental Protection Agency's recently amended rules.

SUMMARY OF THE RULE OR CHANGE: New motor vehicle waste disposal (MVWD) wells and new large-capacity cesspools are banned nationwide as of April 5, 2000, and existing large-capacity cesspools must close by April 5, 2005. Existing MVWD wells must close or submit a permit application by various deadlines.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 136, 141, 142, 144, 146, 148, and 261

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 141, 144, and 146; July 1, 2000, ed.

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Estimate \$350,000 in 1-time costs for compliance by the Utah Department of Transportation. Additional costs may be incurred by the Division of Water Quality if a significant number of facilities apply for and receive UIC permits.

❖**LOCAL GOVERNMENTS:** While the number of affected facilities is unknown at this time, an estimate of \$500,000 in 1-time costs for compliance by city and county road shops is not unreasonable (based on 236 cities and towns and 29 counties in Utah).

❖**OTHER PERSONS:** While the number of affected facilities is unknown at this time, an estimate of \$1,000,000 in 1-time costs for compliance by other affected facilities is not

unreasonable (based on 236 cities and towns and 29 counties in Utah).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Estimate \$5,000 average 1-time costs for affected facilities that choose to close an injection well, including contaminated soil removal and disposition. Alternative disposal choices may add additional costs for oil/water separators (approximately \$2,500) or holding tanks (approximately \$2,000), and routine pumping (approximately \$250) and disposal (approximately \$200). Facilities that request and receive a permit may incur a permit fee of approximately \$4,500 (for nongovernmental entities, with lesser renewal fees every 5 years), with estimated annual permit compliance costs of \$2,500 to \$5,000. Many of these costs will be avoided or reduced if the affected facilities implement common waste reduction practices such as running a dry shop, recycling, etc.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The total number of affected facilities is unknown at this time, and individual compliance costs may vary greatly. Facilities that choose to close their injection wells may be able to discharge to existing sewer lines with only moderate costs, while others may have to install holding tanks and pump them periodically, with commensurately higher and on-going costs. Facilities that apply for and receive a UIC permit will probably incur the highest costs over time. Historically, however, facilities such as those affected by this rule have not applied for permits.

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

Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Gerald Jackson at the above address, by phone at (801) 538-6023, by FAX at (801) 538-6016, or by Internet E-mail at gjackson@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 10/24/2000, 1:30 p.m., Cannon Health Building, 288 North 1460 West, Room No. 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/20/2000

AUTHORIZED BY: Dianne R. Nielson, Executive Director

**R317. Environmental Quality, Water Quality.
R317-7. Underground Injection Control (UIC) Program.**

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R317-7-1. Incorporation By Reference.

1.1 40 C.F.R. 144.7, 144.13~~(c) and~~ (d), 144.14, 144.16, 144.23(c), 144.32, 144.34, 144.36, 144.38, 144.39, 144.40, 144.41, 144.51 (a)-(o) and (q), 144.52, 144.53, 144.54, 144.55, 144.60, 144.61, 144.62, 144.63, 144.64, 144.65, 144.66, 144.67, 144.68, 144.69,~~and~~ 144.70, and 144.87, July 1, ~~[1994]~~2000 ed., are adopted and incorporated by reference with the following exceptions:

- A. "Director" is hereby replaced with "Executive Secretary".
- B. "one quarter mile" is hereby replaced with "two miles".

1.2 40 C.F.R. 146.4, 146.6, 146.7, 146.8, 146.12, 146.13(d), 146.14, 146.32, 146.34, 146.61,146.62, 146.63, 146.64, 146.65, 146.66, 146.67, 146.68, 146.69, 146.70, 146.71, 146.72, and 146.73, July 1, ~~[1994]~~2000 ed., are adopted and incorporated by reference with the following exceptions:

- A. "Director" is hereby replaced with "Executive Secretary";
- B. "one quarter (1/4) mile" and "one-fourth (1/4) mile" are each hereby replaced with "two miles".

1.3 40 C.F.R. Part 148, July 1, 1994 ed., is adopted and incorporated by reference with the exception that "Director" is hereby replaced with "Executive Secretary".

1.4 40 C.F.R. Part 261, July 1, 1994 ed., is adopted and incorporated by reference.

1.5 40 C.F.R. Part 142, July 1, 1994 ed., is adopted and incorporated by reference.

1.6 40 C.F.R. Part 136 Table 1B, July 1, 1994 ed., is adopted and incorporated by reference.

1.7 10 C.F.R. Part 20 Appendix b, Table 11 Column 2, January 1, 1994 ed., is adopted and incorporated by reference.

1.8 40 C.F.R. 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d) and (e); 124.8; 124.10(a)(1)ii, iii, and (a)(1)(V); 124.10(b), (c), (d), and (e); 124.11; 124.12(a); and 124.17(a) and (c), July 1, 1994 ed., are adopted and incorporated by reference with the exception that "Director" is hereby replaced by "Executive Secretary".

1.9 40 C.F.R. Part 141, July 1, 2000 ed., is adopted and incorporated by reference.

R317-7-2. Definitions.

2.1 "Abandoned Well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

2.2 "Application" means standard forms for applying for a permit, including any additions, revisions or modifications.

2.3 "Aquifer" means a geologic formation or any part thereof that is capable of yielding significant water to a well or spring.

2.4 "Area of Review" means the zone of endangering influence or fixed area radius determined in accordance with the provisions of 40 C.F.R. 146.6.

2.5 "Background Data" means the constituents or parameters and the concentrations or measurements which describe water quality and water quality variability prior to surface or subsurface discharge.

2.6 "Barrel" means 42 (U.S.) gallons at 60 degrees F and atmospheric pressure.

2.7 "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into

porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

2.8 "Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

2.9 "Catastrophic Collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

2.10 "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

2.11 "Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

~~2.11~~2.12 "Confining Bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

~~2.12~~2.13 "Confining Zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

~~2.13~~2.14 "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

~~2.14~~2.15 "Conventional Mine" means an open pit or underground excavation for the production of minerals.

~~2.15~~2.16 "Disposal Well" means a well used for the disposal of fluids into a subsurface stratum.

~~2.16~~2.17 "Drilling Mud" means mud of not less than 36 viscosity (A.P.I. Full Funnel Method) and a weight of not less than nine pounds per gallon.

2.18 "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

~~2.17~~2.19 "Exempted Aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 40 C.F.R. 144.7.

~~2.18~~2.20 "Existing Injection Well" means an "injection well" other than a "new injection well."

~~2.19~~2.21 "Experimental Technology" means a technology which has not been proven feasible under the conditions in which it is being tested.

~~2.20~~2.22 "Fault" means a surface or zone of rock fracture along which there has been a displacement.

~~2.21~~2.23 "Flow Rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

~~2.22~~2.24 "Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

~~2.23~~2.25 "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

~~2.24~~2.26 "Formation Fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

~~2.25~~2.27 "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261.

~~2.26~~2.28 "Groundwater" means water below the ground surface in a zone of saturation.

~~2.27~~2.29 "Hazardous Waste" means a hazardous waste as defined in ~~40 C.F.R. 261.3~~ R315-2-3.

~~2.28~~2.30 "Hazardous Waste Management Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

2.31 "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

~~2.29~~2.32 "Injection Well" means a well into which fluids are being injected for subsurface emplacement of the fluids.

~~2.30~~2.33 "Injection Zone" means a geological "formation," group of formations, or part of a formation receiving fluids through a well.

~~2.31~~2.34 "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

~~2.32~~2.35 "Monitoring Well" means a well used to measure groundwater levels and to obtain water samples for water quality analysis.

~~2.33~~2.36 "New Injection Well" means an injection well which began injection after January 19, 1983.

~~2.34~~2.37 "Packer" means a device lowered into a well to produce a fluid-tight seal within the casing.

~~2.35~~2.38 "Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

~~2.36~~2.39 "Plugging Record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

2.40 "Point of injection" means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box - the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

~~2.37~~2.41 "Pressure" means the total load or force per unit area acting on a surface.

~~2.38~~2.42 "Project" means a group of wells in a single operation.

~~2.39~~2.43 "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 C.F.R. Part 20, Appendix B, Table II Column 2.

2.44 "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation

areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

2.45 "Septic system" means a "well" that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

~~[2.40]~~2.46 "Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

~~[2.41]~~2.47 "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

2.48 "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

~~[2.42]~~2.49 "Surface Casing" means the first string of well casing to be installed in the well.

~~[2.43]~~2.50 "Total Dissolved Solids (TDS)" means the total residue (filterable) as determined by use of the method specified in 40 C.F.R. Part 136 Table 1B.

~~[2.44]~~2.51 "Transferee" means the owner or operator receiving ownership and/or operational control of the well.

~~[2.45]~~2.52 "Transferor" means the owner or operator transferring ownership and/or operational control of the well.

~~[2.46]~~2.53 "Underground Injection" means a "well injection".

~~[2.47]~~2.54 "Underground Sources of Drinking Water (USDW)" means an aquifer or its portion which:

A. Supplies any public water system, or which contains a sufficient quantity of ground water to supply a public water system; and

1. currently supplies drinking water for human consumption; or

2. contains fewer than 10,000 mg/l total dissolved solids (TDS); and

B. is not an exempted aquifer. (See Section 7-4).

~~[2.48]~~2.55 "Well" means a bored, drilled or driven shaft whose depth is greater than the largest surface dimension[-]; or a dug hole whose depth is greater than the largest surface dimension[-]; or an improved sinkhole; or a subsurface fluid distribution system.

~~[2.49]~~2.56 "Well Injection" means the subsurface emplacement of fluids through a ~~bored, drilled or driven] well[-; or through a dug well, where the depth of the dug well is greater than the largest surface dimension].~~

~~[2.50]~~2.57 "Well Monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

~~[2.51]~~2.58 "Well Plug" means a watertight and gas-tight seal installed in a borehole or well to prevent movement of fluids.

~~[2.52]~~2.59 "Well Stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes:

- (1) surging;
- (2) jetting;

(3) blasting;

(4) acidizing; and

(5) hydraulic fracturing.

R317-7-3. Classification of Injection Wells.

Injection wells are classified as follows:

3.1 Class I

A. Hazardous Waste Injection Wells: wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water;

B. Nonhazardous Injection Wells: other industrial and municipal waste disposal wells which inject nonhazardous fluids beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water; this category includes disposal wells operated in conjunction with uranium mining activities.

C. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within two miles of the well bore.

3.2 Class II. Wells which inject fluids:

A. which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

B. for enhanced recovery of oil or natural gas; and

C. for storage of hydrocarbons which are liquid at standard temperature and pressure.

Class II injection wells are regulated by the Division of Oil, Gas and Mining under Oil and Gas Conservation General Rules, R649-5.

3.3 Class III. Wells which inject for extraction of minerals, including:

A. mining of sulfur by the Frasch process;

B. in situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V; and

C. solution mining of salts or potash.

3.4 Class IV

A. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which, within two miles of the well, contains an underground source of drinking water;

B. wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which, within two miles of the well, contains an underground source of drinking water;

C. wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under Section 7-3.1(A) or 7-3.4(A) and (B) of these rules (e.g. wells used to dispose

of hazardous wastes into or above a formation which contains an aquifer which has been exempted).

3.5 Class V. Injection wells not included in Classes I, II, III, or IV. Class V wells include:

- A. air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;
- B. large capacity cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons per day;
- C. cooling water return flow wells used to inject water previously used for cooling;
- D. drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;
- E. dry wells used for the injection of wastes into a subsurface formation;
- F. recharge wells used to replenish the water in an aquifer;
- G. salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- H. sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, whether what is injected is radioactive waste or not;
- I. septic systems used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons per day;
- J. subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;
- K. stopes leaching, geothermal and experimental wells;
- L. brine disposal wells for halogen recovery processes;
- M. injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power; and
- N. injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.
- O. motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (see 40 CFR Part 142 and Utah Public Drinking Water Rules R309-103). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

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R317-7-5. Prohibition of Unauthorized Injection.

5.1 Any underground injection is prohibited except as authorized by permit or as allowed under these rules.

5.2 No authorization by permit or by these rules for underground injection shall be construed to authorize or permit any underground injection which endangers a drinking water source.

5.3 Underground injections are prohibited which would allow movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a violation of any primary drinking water regulation (40 C.F.R. Part 142 and Utah Public Drinking Water Rules R309-103), or which may adversely affect the health of persons. Underground injections shall not be authorized if they may cause a violation of any ground water quality rules that may be promulgated by the Utah Water Quality Board. Any applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

5.4 For Class I and III wells, if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Executive Secretary shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including closure of the injection well, as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit or the permit may be terminated, or appropriate enforcement action may be taken if the permit has been violated.

5.5 For Class V wells, if at any time the Executive Secretary determines that a Class V well may cause a violation of primary drinking water rules under R309-103, the Executive Secretary shall:

- A. require the injector to obtain an individual permit;
- B. order the injector to take such actions, including closure of the injection well, as may be necessary to prevent the violation; or
- C. take appropriate enforcement action.

5.6 Whenever the Executive Secretary determines that a Class V well may be otherwise adversely affecting the health of persons, the Executive Secretary may require such actions as may be necessary to prevent the adverse effect.

5.7 Class IV Wells[=]

A. Prohibitions. The construction, operation or maintenance of any Class IV well is prohibited except as specified in 40 C.F.R. 144.13[~~(c) and~~] (d) and 144.23(c) as limited by the definition of Class IV wells in section 7-3.4 of these rules.

B. Plugging and abandonment requirements. Prior to abandoning a Class IV well, the owner or operator shall close the well in a manner acceptable to the Executive Secretary. At least 30 days prior to abandoning a Class IV well, the owner or operator shall notify the Executive Secretary of the intent to abandon the well.

5.8 Notwithstanding any other provision of this section, the Executive Secretary may take emergency action upon receipt of information that a contaminant which is present in, or is likely to enter a public water system, may present an imminent and substantial endangerment to the health of persons.

5.9 Records. The Executive Secretary may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules.

R317-7-6. Permit and Compliance Requirements - New and Existing Wells.

6.1 The owner or operator of any new injection well is required to obtain a permit from the Executive Secretary prior to construction unless excepted by R317-7-6.3. Compliance with construction plans and standards is required prior to commencing injection operations. Changes in construction plans require approval of the Executive Secretary.

6.2 Owners or operators of existing underground injection wells are required to obtain a permit from the Executive Secretary unless specifically excepted by Section 7-6.3 of these rules.

6.3

A. Existing and new Class V injection wells are authorized by rule ~~until further requirements under future rules become applicable. Owners or operators of such wells are not required to obtain a permit.~~, subject to the conditions in Section 7-6.5 of these rules.

B. Well authorization under this Section 7-6.3 expires upon the effective date of a permit issued in accordance with these rules or upon proper closure of the well.

C. An owner or operator of a well which is authorized by rule under this Section 7-6.3 is prohibited from injecting into the well:

1. Upon the effective date of a permit denial.
2. Upon failure to submit a permit application in a timely manner if requested by the Executive Secretary under Section 7-6.4 of these rules.
3. Upon failure to submit inventory information in a timely manner in accordance with Section 7-6.4(C) of these rules.

6.4

A. The Executive Secretary may require any owner or operator of a Class I, III or V well authorized under Section 7-6.3 to apply for and obtain an individual or area permit. Cases where permits may be required include:

1. The injection well is not in compliance with the applicable rules.
2. The injection well is not or no longer is within the category of wells and types of well operations authorized by Section 7-6.3.
3. Protection of an USDW.

B. Any owner or operator authorized under Section 7-6.3 may request a permit and hence be excluded from coverage under Section 7-6.3.

C. Owners or operators of all injection wells regulated by Section 7-6.3 shall submit the following inventory information to the Executive Secretary:

1. facility name and location;
2. name and address of legal contact;
3. ownership of facility;
4. nature and type of injection wells; and
5. operating status of injection wells.

Inventory information shall be submitted no later than January 19, 1984 for existing injection wells and before injection begins for new injection wells.

6.5 Additional requirements for large-capacity cesspools and motor vehicle waste disposal wells (see Class V well descriptions in Sections 7-3.5(B) and 7-3.5(O), respectively).

A. All existing large-capacity cesspools (operational or under construction by April 5, 2000) must close by April 5, 2005. See closure requirements in Section 7-6.6.

B. All new or converted large-capacity cesspools (construction not started before April 5, 2000) are prohibited.

C. All existing motor vehicle waste disposal wells (operational or under construction by April 5, 2000) must either be closed or their owners or operators must obtain a UIC permit.

1. For those wells located within a ground water protection area as designated by the Utah Division of Drinking Water (DDW), closure or permit application submittal must take place within one year of completion of DDW's ground water protection area assessment for the pertinent area.

2. If Utah does not complete all the local ground water protection area assessments by January 1, 2004, or by January 1, 2005 if an extension is granted to the state as described in 40 CFR 144.87(b), all motor vehicle waste disposal wells statewide located outside an area with a completed assessment must either be closed or their owners or operators must submit a UIC permit application by January 1, 2005 (or by January 1, 2006 if an extension is granted to the state as described in 40 CFR 144.87(b)). The closure deadline may be extended by the Executive Secretary for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

3. If Utah does complete all the local ground water protection area assessments by January 1, 2004, or by January 1, 2005 if an extension is granted to the state as described in 40 CFR 144.87(b), all motor vehicle waste disposal wells statewide located outside an area with a completed assessment must either be closed or their owners or operators must submit a UIC permit application by January 1, 2007.

4. If well closure is the option chosen, the closure requirements in Section 7-6.6 must be followed. The closure deadline may be extended by the Executive Secretary for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

5. If obtaining a UIC permit is the option chosen, Utah Drinking Water Maximum Contaminant Levels (MCL's), Utah Ground Water Quality Standards, and EPA Adult Lifetime Health Advisories must be met at the point of injection while the permit application is under review. These standards must also be met at the point of injection under the terms of the permit, when issued. Utah Ground Water Protection Levels may be required to be met at downgradient ground water monitoring wells, if required to be installed. Such a permit may require pretreatment of the wastewater, and will require adherence to best management practices and monitoring of the quality of the injectate and any sludge generated.

D. All new or converted motor vehicle waste disposal wells (construction not started before April 5, 2000) are prohibited.

6.6 Class V well plugging and abandonment requirements.

A. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 141 or Utah Public Drinking Water Rules R309-103, or may otherwise adversely affect the health of persons.

B. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

C. The owner or operator must notify the Executive Secretary of intent to close the well at least 30 days prior to closure.

6.7 Conversion of motor vehicle waste disposal wells. In limited cases, the Executive Secretary may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

[6.5]6.8 Time for Application for Permit. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit a complete application to the Executive Secretary in accordance with Section 7-9 a reasonable time before construction is expected to begin, except for new wells covered by an existing area permit.

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KEY: water quality, underground injection control* [1994]2000 19-5 Notice of Conitnuation November 27, 1996



Environmental Quality, Water Quality R317-8 Utah Pollutant Discharge Elimination System (UPDES)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23161

FILED: 09/15/2000, 13:51

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Water Quality (DWQ) is delegated by the Environmental Protection Agency (EPA) with the authority to administer the Clean Water Act (CWA) mandated National Pollutant Discharge Elimination System (NPDES) permitting program in the State of Utah. In order to maintain that delegation status, DWQ must establish requirements that are parallel with the Federal Regulations in the area of NPDES. The EPA adopted final "Phase II Storm Water" rules affecting the NPDES permit program that were published on December 8, 1999, in the *Federal Register*. The proposed rule change submitted herewith, adopts the equivalent of the recent modifications to the Federal Regulations made last December to the NPDES program.

SUMMARY OF THE RULE OR CHANGE: The EPA calls the rule change "Phase II Storm Water" rules. The rule requires NPDES Permits from small municipalities and small construction sites, that were not previously required. Under "Phase I Storm Water" rules, large and medium communities (those with populations over 100,000) and construction activity disturbing over 5 acres were required to get permitted. Under "Phase II Storm Water" municipalities in urban areas and some other municipalities with populations between 10,000 and 50,000 (based on criteria that DWQ - or the EPA if DWQ doesn't - must develop) are required to get permitted. For small construction, under "Phase II Storm Water" construction activity from 1 to 5 acres is required to be permitted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104

FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 122 and 123

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR December 8, 1999, edition

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: \$225,000 (cost for 3 full time equivalents (FTEs))

❖LOCAL GOVERNMENTS: \$3,884,000 (based on EPA estimates of \$9.16/yr/household). This cost is to total aggregate cost of all municipalities that are anticipated to be affected by this rule change.

❖OTHER PERSONS: Costs to the construction and development industry are difficult to assess, because even with a number for construction sites (which will vary base on factors like the strength of the economy), the costs to each site will vary widely (see "Comments by the department head below).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons is the same as is stated in "Comments by the department head below.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Estimated costs to construction sites vary widely. Costs are low for sites that are flat, but costs increase with sites as slopes get steeper and soils become more erodible. The EPA estimated construction best management practices (BMP) costs for 27 model sites. This was done on sites that were 1, 3, and 5 acres; with slopes that were 3%, 7%, and 12%. By their calculations the average costs for a 1-acre site was \$1,206, for a 3-acre site it was \$4,598, and for a 5-acre site it was \$8,709.

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

Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Harry Campbell at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6016, or by Internet E-mail at hcampbel@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 10/24/2000, 1:30 p.m., 288 North 1460 West, Room No. 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/20/2000

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. Environmental Quality, Water Quality.

R317-8. Utah Pollutant Discharge Elimination System (UPDES).

R317-8-1. General Provisions and Definitions.

1.1 Comparability With the CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 Conflicting Provisions. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 Severability. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 Administration of the UPDES Program. The Executive Secretary of the Utah Water Quality Board has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Executive Secretary in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The Executive Secretary has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

In accordance with UCA Subsection 19-5-112(2), a hearing for a person who has been denied a permit or who has had a permit revoked shall be conducted before the Executive Director or his (or her) designee. The decision of the Executive Director is final and binding on all parties unless a judicial appeal is made. Appeals of permit conditions are also made to the Executive Director. The Executive Secretary is under the administrative direction of the Executive Director of the Department of Environmental Quality.

1.5 Definitions. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or

disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms approved by the Utah Water Quality Board, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Executive Secretary, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the Executive Secretary to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board or its authorized representative.

(15) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(16) "Draft permit" means a document prepared under R317-8-6.3 indicating the Executive Secretary's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

(17) "Effluent limitation" means any restriction imposed by the Executive Secretary on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

(18) "Effluent limitations guidelines" means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

(19) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(20) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

(21) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under R317-8-2.5.

(22) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(23) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(24) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

(25) "Major facility" means any UPDES facility or activity classified as such by the Executive Secretary in conjunction with the Regional Administrator.

(26) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(27) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

(28) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing

permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(29) "New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(30) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the Executive Secretary to implement the requirements of the UPDES regulations. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm-water runoff or return flows from irrigated agriculture.

(35) "Pollutant" means, for the purpose of these regulations, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological

integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

(37) "Primary industry category" means any industry category listed in R317-8-3.~~[10]~~11.

(38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

(39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the Executive Secretary. A proposed permit is not a draft permit.

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these regulations, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

(42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

(43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

(44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

(45) "Secondary industry category" means any industry category which is not a primary industry category.

(46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(47) "Seven (7) consecutive day discharge limit" means the highest allowable average of daily discharges over a seven (7) consecutive day period.

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

(49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage

sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

(50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

(51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act and which is required to obtain a permit under R317-8-2.1.

~~(5[2a]3)~~ "Standards for sewage sludge use or disposal" means the rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

~~(5[3]4)~~ "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

~~(5[4]5)~~ "Thirty (30) consecutive day discharge limit" means the highest allowable average of daily discharges over a thirty (30) consecutive day period.

~~(5[5]6)~~ "Toxic pollutant" means any pollutant listed as toxic in R317-8-7.~~[5]6~~ or, in the case of sludge use or disposal practices, any pollutant identified as toxic in State adopted rules for the disposal of sewage sludge.

~~(5[6]7)~~ "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

~~(5[7]8)~~ "Variance" means any mechanism or provision under the UPDES regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

~~(5[8]9)~~ "Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be "waters of the State." The exception for confined bodies of water does not apply to any waters which meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to

either surface water or groundwater. Waters of the State includes "wetlands" as defined in the Federal Clean Water Act.

(59)60) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(60)1) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

(61)2) "Utah Pollutant Discharge Elimination System (UPDES)" means the State-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the Utah Water Quality Act.

1.6 Definitions Applicable to Storm-water Discharges.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit (other than the UPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the [latest]1990 Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the [latest]1990 Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) or (b) and that are designated by the Executive Secretary as part of a large or medium municipal separate storm sewer system. See R317-8-3.[8]9(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the [latest]1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the [latest]1990 [d]Decennial [e]Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the Executive Secretary as part of the large or medium municipal separate storm sewer system. See R317-8-3.[8]9(6)(b) for provisions regarding this definition.

(8) "MS4" means a municipal separate storm sewer system.

(8)9) "Municipal separate storm sewer system" means ~~a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) which is:~~

~~— (a) Owned or operated by the state, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State; and~~

~~— (b) Designed or used for collecting or conveying storm water;~~

~~— (c) Not a combined sewer;~~

~~— (d) Not part of a Publicly Owned Treatment Works (POTW); all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs R317-8-1.6(4), (7), and (14) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.~~

(9)10) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(10)11) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(11)12) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(12)13) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA: any chemical the facility is required to report pursuant to section 313 of Title III of SARA: fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(14) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, State of Utah, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated

and approved management agency under section 208 of the CWA that discharges to waters of the State.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to paragraphs R317-8-1.6(4) and (7) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(15) "Small MS4" means a small municipal separate storm sewer system.

~~(13)~~16 "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

~~(14)~~17 "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See R317-8-3.8]9(6)(c) and (d) for provisions applicable to this definition.

(18) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

1.7 Abbreviations and Acronyms. The following abbreviations and acronyms, as used throughout the UPDES regulations, shall have the meaning given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 Upgrade and Reclassification. Upgrading or reclassification of waters of the State by the Utah Water ~~Pollution Control Committee~~ Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 Public Participation. In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these regulations, the Executive

Secretary will investigate and provide written response to all citizen complaints. In addition, the Executive Secretary shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Executive Secretary will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 Incorporation of Federal Regulations by Reference. The State adopts the following Federal standards and procedures, effective as of ~~July 1, 1994~~ December 8, 1999, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute "Executive Secretary" for all federal regulation references to "State Director".

(c) Substitute "R317-8-4.4, R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute "Executive Secretary" for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards) with the following exception:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(5) 40 CFR 403.7 (Removal Credits)

(6) 40 CFR 403.13 (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR 403.15 (Net/Gross Calculation)

(8) 40 CFR Parts 405 through 471

(9) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(10) 40 CFR 122.30

(11) 40 CFR 122.32

(a) In 122.32(a)(2), replace the reference 122.26(f) with R317-8-3.9(5).

(12) 40 CFR 122.33

(a) In 122.33(b)(2)(i), replace the reference 122.21(f) with R317-8-3.1(6).

(b) In 122.33(b)(2)(i), replace the reference 122.21(f)(7) with R317-8-3.1(6)(g).

(c) In 122.33(b)(2)(ii), replace the reference 122.26(d)(1) and (2) with R317-8-3.9(3)(a) and (b)

(d) In 122.33(b)(3), replace the reference 122.26 with R317-8.

(e) In 122.33(b)(3), replace the reference 122.26(d)(1)(iii) and (iv); and (d)(2)(iv) with R317-8-3.9(3)(a)3 and 4; and (3)(b)4.

(13) 40 CFR 122.34

(a) In 122.34(a), replace the reference 122.26(d) with R317-8-3.9(3).

(b) In 122.34(b)(3)(i), replace the reference 122.26(d)(2) with R317-8-3.9(3)(b).

(c) In 122.34(b)(4)(i), replace the reference 122.26(b)(15)(i) with R317-8-3.9(6)(e)1.

(d) In 122.34(f), replace the references 122.41 through 122.49 with R317-8-4.1 through R317-8-5.4.

(e) In 122.34(g)(2), replace the reference 122.7 with R317-8-3.3.

(14) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with R317-8.

(15) 40 CFR 122.36

(16) For the references R317-8-1.10(11), (12), (13), (14), and (15) make the following substitutions:

(a) "The Executive Secretary of the Water Quality Board" for the "NPDES permitting authority"

(b) "UPDES" for "NPDES"

R317-8-2. Scope and Applicability.

2.1 Applicability of the UPDES Requirements. The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Executive Secretary shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Executive Secretary deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.[4]5 through R317-8-8.[9]10.

- (a) Concentrated animal feeding operations;
- (b) Concentrated aquatic animal production facilities;
- (c) Discharges into aquaculture projects;
- (d) Storm water discharges; and
- (e) Silvicultural point sources.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in R317-8-3.[5]6, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.[6]7, discharges to aquaculture projects as defined in R317-8-3.[7]8, and discharges from silvicultural point sources as defined in R317-8-3.[9]10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Executive Secretary may otherwise require under R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Utah Water ~~Pollution Control Committee~~ Quality Board pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Executive Secretary to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Executive Secretary decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Executive Secretary shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Executive Secretary may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Executive Secretary shall notify the discharger in

writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

2.2 Prohibitions. No permit may be issued by the Executive Secretary:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES regulations and for which the Executive Secretary has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 Variance Requests by Non-POTW's. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Executive Secretary to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301(g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Executive Secretary stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.[7]8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Executive Secretary must make a decision (unless the Executive Secretary establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of

the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in R317-8-2.3, the Executive Secretary may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Executive Secretary may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Executive Secretary may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Executive Secretary. Extensions will be no more than six months in duration.

2.5 General Permits

(1) Coverage. The Executive Secretary may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;
2. City, county, or state political boundaries;
3. State highway systems;
4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;
5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;
6. Any other appropriate division or combination of boundaries as determined by the Executive Secretary.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or

2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:

- a. Involve the same or substantially similar types of operations;
- b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.
- c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
- d. Require the same or similar monitoring; and
- e. In the opinion of the Executive Secretary, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Executive Secretary a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the Executive Secretary notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit:

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Executive Secretary, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Executive Secretary.

Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Executive Secretary, be authorized to discharge under a general permit without submitting a notice of intent where the Executive Secretary finds that a notice of intent requirement would be inappropriate. In making such a finding, the Executive Secretary shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Executive Secretary shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The Executive Secretary may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(b)(c) Requiring an individual permit.

1. The Executive Secretary may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Executive Secretary to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Executive Secretary may consider the following factors:

- i. The location of the discharge with respect to waters of the State;
- ii. The size of the discharge;
- iii. The quantity and nature of the pollutants discharged to waters of the State; and
- iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Executive Secretary with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Executive Secretary in accordance with R317-8-6.5. If the reasons cited by

the owner or operator are adequate to support the request, the Executive Secretary may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 Disposal of Pollutants into Wells, into POTWs or By Land Application

(1) The Executive Secretary may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: $P = E \times N/T$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 Variance Requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance

from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 Decision on Variances

(1) The Executive Secretary may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Executive Secretary may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-3. Application Requirements.

3.1 Applying for a UPDES Permit

(1) Application requirements

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Executive Secretary as described in this regulation and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the Executive Secretary will accept the information required under R317-8-3.[#]5 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Executive Secretary in accordance with this section and R317-8-6. A complete application shall include a BMP program, if

necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the Executive Secretary requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Executive Secretary. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under R317-8-3.[8]9(6)11 shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also R317-8-3.2 and R317-8-3.9(2)1.g. and 2.

(3) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The Executive Secretary may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The Executive Secretary may grant permission to submit the information required by R317-8-3.[#]5(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the Executive Secretary to apply under R317-8-3. Forms may be obtained from the Executive Secretary. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The Executive Secretary, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Executive Secretary may choose to do any or all of the following:

- a. Initiate enforcement action based upon the permit which has been continued;
- b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);
- c. Issue a new permit under R317-8-6 with appropriate conditions; or
- d. Take other actions authorized by the UPDES regulations.

(5) Completeness. The Executive Secretary will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the Executive Secretary receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the Executive Secretary, using the application form provided by the Executive Secretary.

- (a) The activities being conducted which require the applicant to obtain UPDES permit.
- (b) Name, mailing address, and location of the facility for which the application is submitted.
- (c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.
- (d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.
- (e) Whether the facility is located on Indian lands.
- (f) A listing of all other relevant environmental permits, or construction approvals issued by the Executive Secretary or other state or federal permits.

(g) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source regulations promulgated by the Executive Secretary.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the Executive Secretary within 120 days after promulgation of a

standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the Executive Secretary prior to the promulgation of an applicable standard for sewage sludge use or disposal if the Executive Secretary determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Executive Secretary at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the Executive Secretary, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the Executive Secretary an address for receipt of any legal paper for service of process. The last address provided to the Executive Secretary pursuant to this provision shall be the address at which the Executive Secretary may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in administering the UPDES program.

3.[~~1A~~]2 Application Requirements for New Sources and New Discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of R317-8-3.[~~4~~]5 or new discharges of storm water associated with industrial activity which are subject to R317-8-3.[~~8~~]9(2)(a) except as provided by R317-8-3.[~~8~~]9(2)(a)2, shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in R317-8-3.[~~4~~]5(2).

(c) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is

expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by R317-8-4.3(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) Effluent Characteristics. The requirements in R317-8-3.[4]5(7) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of R317-8-4.3(7) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(a) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The Executive Secretary may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.1[+]2(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.1[+]2(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);
2. The organic toxic pollutants in R317-8-3.1[+]2(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.1[+]2(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.[4]5). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.[3]4.

3.[2]3 Confidentiality of Information

(1) Any information submitted to the Executive Secretary pursuant to the UPDES regulations may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the standards of 40 CFR Part 2.

(2) Information which includes effluent data and records required by UPDES application forms provided by the Executive Secretary under R317-8-3.[+] may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

3.[3]4 Signatories to Permit Applications and Reports

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Executive Secretary under R317-8-3.[8]2([2]3)(c) shall be signed by a person described in subsection (1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section:

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(c) The written authorization is submitted to the Executive Secretary.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3.[4]5 Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for UPDES permits shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under R317-8-3.[4]5. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide a pictorial description of the nature and

amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, (for example, "dye-making reactor," "distillation tower.") For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

(4) Intermittent flows. If any of the discharges described in R317-8-3.[4](3) are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production levels. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by R317-8-4.3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided, except information on storm water discharges which is to be provided as specified in R317-8-3.[8]2. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. When no particular analytical method is required the applicant may use any suitable method but must provide a description of the method. The Executive Secretary may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls.

The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the Executive Secretary may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least

72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under R317-8-3.[8]2(3) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Executive Secretary). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in R317-8-3.[8]2(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in R317-8-3.[8]2 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Executive Secretary may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(a) Every applicant shall report quantitative data for every outfall for the following pollutants:

1. Biochemical Oxygen Demand (BOD)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

(b) The Executive Secretary may waive the reporting requirements for one or more of the pollutants listed in R317-8-3.[4]5(7)(a) if the applicant has demonstrated that the waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one or more primary industry category, listed in R317-8-3.1[0]1 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table I of R317-8-3.1[1]2 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.[4]5(8). Table II of R317-8-3.1[1]2 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Table III of R317-8-3.1[1]2 (the toxic metals, cyanide, and total phenols).

(d) 1. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of R317-8-3.1[1]2 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of R317-8-3.1[1]2 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under R317-8-3.[4]5(8) is not required to analyze for pollutants listed in Table II of R317-8-3.1[1]2 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.[1]12(5) of this regulation, certain hazardous substances and asbestos are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(f) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in R317-8-3.[4]5(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.1[4]2(2), organic toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than \$100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Executive Secretary may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Executive Secretary has adequate information to issue the permit.

(10) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by R317-8-3.[4]5(7), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Executive Secretary, upon request, other information as the Executive Secretary may reasonably be required to assess the discharges of the facility and to determine whether to issue a UPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

3.[5]6 Concentrated Animal Feeding Operations

(1) Permit required. Concentrated animal feeding operations are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

1. Animals, other than aquatic animals, have been, are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; or

3. Two (2) or more animal feeding operations under common ownership if they adjoin each other or if they use a common area or system for the disposal of wastes and meet the conditions of a(1) and (2) above.

b. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in this Section or which the Executive Secretary designates under subsection (3) of this section.

(c) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4 plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(d) "Manmade" means constructed by man and used for the purpose of transporting wastes.

(3) Case-by-Case designation of concentrated animal feeding operations.

(a) The Executive Secretary may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary shall consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the State;

2. The location of the animal feeding operation relative to waters of the State;

3. The means of conveyance of animal wastes and process waste waters into waters of the State;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the State; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in R317-8-3.[5]6(5)(a) or (b) will be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into the waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operations.

(c) A permit application will not be required from a concentrated animal feeding operation designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the operation and determined that the operation could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated animal feeding operations shall provide the following information to the Executive Secretary, using the application form provided:

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(5) Criteria for determining a concentrated animal feeding operation. An animal feeding operation is a concentrated animal feeding operation for purposes of this regulation if either of the following criteria are met.

(a) Criteria of number only. The facility meets the criteria if more than the numbers of animals specified in any of the following categories are confined:

1. 1,000 slaughter and feeder cattle,
2. 700 mature dairy cattle, whether milked or dry cows,
3. 2,500 swine each weighing over 25 kilograms, (approximately 55 pounds),
4. 500 horses,
5. 10,000 sheep or lambs,
6. 55,000 turkeys,
7. 100,000 laying hens or broilers, if the facility has continuous over flow watering,
8. 30,000 laying hens or broilers, if the facility has a liquid manure handling system,
9. 5,000 ducks, or
10. 1,000 animal units.

(b) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number and types of animals are confined:

1. 300 slaughter or feeder cattle,
2. 200 mature dairy cattle, whether milked or dry cows,
3. 750 swine, each weighing over 25 kilograms (approximately 55 pounds),
4. 150 horses,
5. 3,000 sheep or lambs,
6. 16,500 turkeys,
7. 30,000 laying hens or broilers, if the facility has continuous overflow watering,
8. 9,000 laying hens or broilers, if the facility has a liquid manure handling system,
9. 1,500 ducks, or
10. 300 animal units; and
11. Either one of the following conditions are met:
 - Pollutants are discharged into waters of the state through a manmade ditch, flushing system or other similar manmade device; or
 - Pollutants are discharged directly into waters of the State which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

(6) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in R317-8-3.[5]6(5)(a) and (b) if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.

3.[6]7 Concentrated Aquatic Animal Production Facilities

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.[6]7(5) or which the Executive Secretary designates under R317-8-3.[6]7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The Executive Secretary may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary will consider the following factors:

1. The location and quality of the receiving waters of the State;
2. The holding, feeding, and production capacities of the facility;
3. The quantity and nature of the pollutants reaching waters of the State; and
4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the Executive Secretary using the application form provided:

- (a) The maximum daily and average monthly flow from each outfall.
- (b) The number of ponds, raceways, and similar structures.
- (c) The name of the receiving water and the source of intake water.
- (d) For each species of aquatic animals, the total yearly and maximum harvestable weight.
- (e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

3.[7]8 Aquaculture Projects

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

3.[8]9 Storm Water Discharges

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity;

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system;

5. A discharge which the Executive Secretary determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Executive Secretary may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Executive Secretary may consider the following factors:

a. The location of the discharge with respect to waters of the State;

b. The size of the discharge;

c. The quantity and nature of the pollutants discharged to waters of the State; and

d. Other relevant factors.

(b) The Executive Secretary may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products located on the site of such operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The Executive Secretary may either issue one system-wide permit covering all discharges from municipal separate storm

sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.

3. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

a. Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

4. A regional authority may be responsible for submitting a permit application under the following guidelines:

i. The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

ii. The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

iii. Each of the operators of municipal separate storm sewers within the systems described in R317-8-1.6(4)(a),(b) and (c) or R317-8-1.6(7)(a),(b), and (c), that are under the purview of the designated regional authority, shall comply with the application requirements of R317-8-3.[8]9(3).

5. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Executive Secretary may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

6. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

7. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of R317-8-3.[8]9(2), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best

reflects the principal products or services provided by each facility; and any existing UPDES permit number.

(e) Other municipal separate storm sewers. The Executive Secretary may issue permits for municipal separate storm sewers that are designated under R317-8-3.[8]9(1)(a)(5) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Executive Secretary, in his discretion, may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

2. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and that are not subject to the provisions of this section.

(h) Small municipal, small construction, TMDL pollutants of concern, and significant contributors of pollution.

1. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (1)(a) of this section to obtain a permit, operators shall be required to obtain a UPDES permit only if:

a. The discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see R317-8-1.10(11)).

b. The discharge is a storm water discharge associated with small construction activity pursuant to paragraph R317-8-3.9(6)(e).

c. The Executive Secretary or authorized representative determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or
d. The Executive Secretary or authorized representative determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. Operators of small MS4s designated pursuant to paragraphs (1)(h)1.a., (1)(h)1.c., and (1)(h)1.d. of this section shall seek coverage under an UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 (see R317-8-1.10(12) through R317-8-1.10(14)). Operators of non-municipal sources designated pursuant to paragraph (1)(h)1.b.; (1)(h)1.c.; and (1)(h)1.d. of this section shall

seek coverage under a UPDES permit in accordance with paragraph (2)(a) of this section.

3. Operators of storm water discharges designated pursuant to paragraphs (1)(h)1.c. and (1)(h)1.d. of this section shall apply to the Executive Secretary for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary (see R317-8-3.6(3)). (2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit ~~or apply for a permit through a group application,~~ or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Executive Secretary is evaluating under R317-8-3.[8]9(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.[8]9(2)(b) of this section, shall submit an UPDES application in accordance with R317-8-3.1 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2D, and 2F.

1. Except as provided in R317-8-3.[8]9(2)(a)2, 3, and 4, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the

ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with R317-8-3.1 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

i. Any pollutant limited in an effluent guideline to which the facility is subject;

ii. Any pollutant listed in the facility's UPDES permit for its process wastewater (if the facility is operating under an existing UPDES permit);

iii. Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

iv. Any information on the discharge required under R317-8-3.[4]5(7)(d) and (e);

v. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

vi. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.[4]5(2),(3),(4),(5),(7)(a),(c), and (f); and

g. Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in R317-8-3.[8]9(2)(a)1e instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in R317-8-3.[4]5(2)(a)1e within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the UPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of R317-8-3.[1A]2(3)(b) and (c) and 3.[1A5]2(5).

2. ~~The~~An operator of an existing or new storm water discharge that is associated with industrial activity solely under R317-8-3.[8]9(6)(c)11 of this section or is associated with small construction activity solely under paragraph R317-8-3.9(6)(e) of this section. is exempt from the requirements of R317-8-3.[4]5 and R317-8-3.[8]9(2)(a)1. Such operator shall provide a narrative description of:

a. The location (including a map) and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with R317-8-3.[8]9(2)(a)1, unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987;

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

5. Applicants shall provide such other information the Executive Secretary may reasonably require to determine whether to issue a permit and may require any facility subject to R317-8-3.[8]9(2)(a)2 to comply with R317-8-3.[8]9(2)(a)1.

~~(b) Group application for discharges associated with industrial activity. Group applications submitted to the State by EPA will be accepted for consideration. However, the State may issue individual permits, general permits or no permits as the circumstances warrant. Additional information, including specific site information, other than that provided in the group application, may be required of any or all applicants. Facilities that are rejected by EPA as members of the group shall submit an individual application to the Executive Secretary no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.~~

(3) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Executive Secretary under R317-8-3.[8]9(1)(a)5, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant

to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under R317-8-3.[8]9(1)(a)5 shall include:

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in R317-8-3.[8]9(3)(b)1, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

b. A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

i. The location of known municipal storm sewer system outfalls discharging to waters of the State;

ii. A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agriculture and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, and estimate of an average runoff coefficient shall be provided;

iii. The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

iv. The location and the permit number of any known discharge to the municipal storm sewer that has been issued a UPDES permit;

v. The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

vi. The identification of publicly owned parks, recreational areas, and other open lands.

4. Discharge characterization.

a. Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

i. Assessed and reported in CWA 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of non-support of designated uses;

ii. Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

iii. Listed in Utah Nonpoint Source Assessments that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

iv. Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

v. Recognized by the applicant as highly valued or sensitive waters;

vi. Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

vii. Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (for any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

i. A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

ii. All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

iii. Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

iv. Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

v. Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or building in the area; history of the area; and land use types;

vi. For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

vii. Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in R317-8-3.[8]2(3)(a)4di-vi, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of R317-8-3.[8]2(3)(b)3. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under R317-8-3.[8]2(3)(b)3.a, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfall or field screening points for such sampling should reflect water quality concerns to the extent practicable.

5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Financial resources. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. The location of any major outfall that discharges to waters of the State that was not reported under R317-8-3.[8]2(3)(a)3b 1. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with R317-8-3.[4]5(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the Executive Secretary (based on information received in part 1 of the application, the Executive Secretary shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less

than five outfalls covered in the application, the Executive Secretary shall designate all outfalls) developed as follows:

i. For each outfall or field screening point designated, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with R317-8-3.[8]2(7) (the Executive Secretary may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

ii. A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

iii. For samples collected and described under R317-8-3.[8]2(3)(b)3.a i and ii, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (other toxic pollutants metals, cyanide, and total phenols) of R317-8-3.1[2]3, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

COD

BOD5

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

iv. Additional limited quantitative data required by the Executive Secretary for determining permit conditions (the Executive Secretary may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation and other parameters necessary to insure representativeness);

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either R317-8-3.[8]2(3)(b)2 or R317-8-3.[8]2(3)(a)3b 1 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under R317-8-3.[8]2(3)(b)3a of this section; and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency

of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Executive Secretary when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

i. A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

ii. A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in R317-8-3.[8]2(3)(b)4d;

iii. A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

iv. A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

v. A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under R317-8-3.[8]2(3)(b)4c); and

vi. A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides,

herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

i. A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

ii. A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

iii. A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

iv. A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

v. A description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

vi. A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

vii. A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit

applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

i. Identify priorities and procedures for inspection and establishing and implementing control measures for such discharges;

ii. Describe a monitoring program for storm water discharges associated with the industrial facilities identified in R317-8-3.[8]9(b)4c to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing UPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under R317-8-3.[4]5(7)(d) 1, 2, and (e).

d. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

i. A description of procedures for site planning which incorporate consideration of potential water quality impacts;

ii. A description of requirements for nonstructural and structural best management practices;

iii. A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

iv. A description of appropriate educational and training measures for construction site operators.

v. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

vi. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under R317-8-3.[8]9(8)(b) 3 and 4. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

vii. Where more than one legal entity submits an application, the application shall contain a description of the rules and responsibilities of each legal entity and procedures to ensure effective coordination.

viii. Where requirements under R317-8-3.[8]9(3)(a)4e, 3.[8]9(3)(b)3b, and 3.[8]9(3)(b)4 are not practicable or are not applicable, the Executive Secretary may exclude any operator of a discharge from a municipal separate storm sewer which is designated under R317-8-3.[8]9(1)(a)5, R317-8-1.6(4)(b) or R317-8-1.6(7)(b) from such requirements. The Executive Secretary shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census; or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of

Census, from any of the permit application requirements except where authorized.

(4) Application deadlines. Any operator of a point source required to obtain a permit under R317-8-3.[8]9(1)(a) that does not have an effective UPDES permit ~~covering~~ authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) ~~[For any storm water discharge associated with industrial activity identified in R317-8-3.[8]9(2) that is not part of a group application or which is not covered under a promulgated storm water general permit, a permit application shall be submitted to the Executive Secretary by October 1, 1992]~~ Storm water discharges associated with industrial activities.

1. Except as provided in paragraph (4)(a)2. Of this section, for any storm water discharge associated with industrial activity identified in paragraphs R317-8-3.9(6)(d)1 through 11 of this section that is not authorized by a storm water general permit, a permit application made pursuant to paragraph R317-8-3.9(2) of this section must be submitted to the Executive Secretary by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Executive Secretary by March 10, 2003.

(b) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the Executive Secretary by November 18, 1991;

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application;

3. Part 2 of the application shall be submitted to the Executive Secretary by November 16, 1992.

(c) For any discharge from a medium municipal separate storm sewer system;

1. Part 1 of the application shall be submitted to the Executive Secretary by May 18, 1992.

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application.

3. Part 2 of the application shall be submitted to the Executive Secretary by May 17, 1993.

(d) A permit application shall be submitted to the Executive Secretary within ~~[60]~~ 180 days of notice, unless permission for a later date is granted by the Executive Secretary for:

1. A storm water discharge which the Executive Secretary determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. A storm water discharge subject to R317-8-3.[8]9(2)(a)5.

(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in R317-8-3.[8]9(4)(a).

(f) For any storm water discharge associated with small construction activity identified in paragraph R317-8-3.9(6)(e)1. of this section, see R317-8-3.1(2). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) For any discharge from a regulated small MS4, the permit application made under 40 CFR 122.33 (see R317-8-1.10(12)) must be submitted to the Executive Secretary by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1) (see R317-8-1.10(11)) unless your MS4 serves a jurisdiction with a population under 10,000 and the Executive Secretary has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Executive Secretary grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) (see R317-8-1.10(11) and (12)).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Executive Secretary to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Executive Secretary to require a UPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Executive Secretary to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Executive Secretary for the designation of a large, ~~or~~ medium, or small municipal separate storm sewer system as defined by R317-8-1.6(4), (7), and (14).

(e) The Executive Secretary shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of the petitions to designate a small MS4 in which case the Executive Secretary shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Executive Secretary may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(4)(a) or (b). In making the determination under R317-8-1.6(4)(b) the Executive Secretary may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(3)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; and

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(4).

(b) The Executive Secretary may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(7)(a) or (b). In making the determination under R317-8-1.6(7)(b) the Executive Secretary may consider the following factors;

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(7)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; or

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(7)(a), (b), and (c).

(c) Storm water discharges associated with industrial activity[
=~~specific industries~~

~~1. For the categories of industries identified in R317-8-3.8]9(6)(c) 1 through 10, the term "storm water discharge associated with industrial activity" includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.~~

~~2. For the categories of industries identified in R317-8-3.8]9(6)(c)11, the term "storm water discharges associated with industrial activity" includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste~~

~~materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in R317-8-3.8]9(6)(c)1 through 11 include those facilities designated under the provisions of R317-8-3.8]9(1)(a)5.] means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program under this part R317-8. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste water (as defined in 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purpose of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (d)1. through(11.) of this section) include those facilities designated under the provisions of paragraph (1)(a)5. of this section.~~

~~d. [Storm water discharge associated with industrial activity= industrial activity]The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this section (see R317-8-3.9(1)(a)2 and (6)(c)).~~

~~1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N except facilities with toxic pollutant effluent standards which are exempted under category R317-8-3.8]9(6)(c)11;~~

~~2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;~~

~~3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining~~

operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under R317-8-3.[8]9(6)(c) 1 through 7 or R317-8-3.[8]9(6)(c) 9 through 11 are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge.

10. Construction activity including clearing, grading and excavation, ~~activities~~ [except] operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or

more [which are not part of a larger common plan of development or sale];

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25[~~and which are not otherwise included within R317-8-3:8(6)(c) 2 through 9].~~

(e) Storm water discharge associated with small construction activity means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Executive Secretary may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

a. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC, 20460, or the Office of Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Executive Secretary that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

b. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on considerations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Executive Secretary that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the Executive Secretary based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

(7) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snow melt and/or runoff, and the discharger satisfies the conditions in paragraphs (7)(a) through (7)(d) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge must:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

2. Complete and sign (according to R317-8-3.3) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (7)(b) of this section;

3. Submit the signed certification to the Executive Secretary once every five years;

4. Allow the Executive Secretary or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the Executive Secretary or authorized representative to make any "no exposure" inspection reports available to the public upon request; and

6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

1. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

2. Adequately maintained vehicles used in material handling; and

3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(c) Limitations

1. Storm water discharges from construction activities identified in paragraphs R317-8-3.9(d)10. and R317-8-3.9(e) are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for an UPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

3. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the

discharge become subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

4. Notwithstanding the provisions of this paragraph, the Executive Secretary retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(d) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Executive Secretary in determining if the facility qualifies for the no exposure exclusion:

1. The legal name, address and phone number of the discharger (see R317-8-3.1(3)).

2. The facility name and address, the county name and the latitude and longitude where the facility is located;

3. The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

b. Materials or residuals on the ground or in storm water inlets from spills/leaks;

c. Materials or products from past industrial activity;

d. Materials handling equipment (except adequately maintained vehicles);

e. Materials or products during loading/unloading or transporting activities;

f. Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge to pollutants);

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;

i. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

j. Application or disposal of process wastewater (unless otherwise permitted); and

k. Particulate matter or visible deposits or residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

4. All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of R317-8-3.3 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from UPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (7)(b) of this section). I understand that I am obligated to submit a no exposure certification form once every five years to the Executive Secretary and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must

allow the Executive Secretary or authorized representative or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and make such inspection reports publicly available upon request. I understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(8) The Executive Secretary may designate small MS4's other than those described in 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)) to be covered under the UPDES storm water permit program, and require a UPDES storm water permit. Designations of this kind will be based on whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and shall apply to any small MS4 located outside of an urbanized area serving a population density of at least 1,000 people per square mile and a population of at least 10,000.

(a) Criteria used in designation may include:

1. discharge(s) to sensitive waters,
2. areas with high growth or growth potential,
3. areas with a high population density,
4. areas that are contiguous to an urbanized area,
5. small MS4's that cause a significant contribution of

pollutants to waters of the State,

6. small MS4's that do not have effective programs to protect water quality by other programs, or

7. other appropriate criteria.

(b) Permits for designated MS4's under this paragraph shall be under the same requirements as small MS4's designated under 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)).

3.[9]10 Silvicultural Activities

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

3.1[0]1 Application Requirements for New and Existing POTWs.

(1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Executive Secretary.

(a) All POTWs with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in R317-8-3.1[0]1(1)(a) and (b) the Executive Secretary may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Executive Secretary determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under R317-8-3.1[0]1(1) or (2) to conduct toxicity testing. POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last UPDES permit reissuance or permit modification under R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Executive Secretary regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the Executive Secretary a written technical evaluation of the need to revise local limits.

3.[H]12 Primary Industry Categories. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES regulations and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

- (1) Adhesives and sealants
- (2) Aluminum forming
- (3) Auto and other laundries
- (4) Battery manufacturing
- (5) Coal mining
- (6) Coil coating
- (7) Copper forming
- (8) Electrical and electronic components

- (9) Electroplating
 - (10) Explosives manufacturing
 - (11) Foundries
 - (12) Gum and wood chemicals
 - (13) Inorganic chemicals manufacturing
 - (14) Iron and steel manufacturing
 - (15) Leather tanning and finishing
 - (16) Mechanical products manufacturing
 - (17) Nonferrous metals manufacturing
 - (18) Ore mining
 - (19) Organic chemicals manufacturing
 - (20) Paint and ink formulation
 - (21) Pesticides
 - (22) Petroleum refining
 - (23) Pharmaceutical preparations
 - (24) Photographic equipment and supplies
 - (25) Plastics processing
 - (26) Plastic and synthetic materials manufacturing
 - (27) Porcelain enameling
 - (28) Printing and publishing
 - (29) Pulp and paper mills
 - (30) Rubber processing
 - (31) Soap and detergent manufacturing
 - (32) Steam electric power plants
 - (33) Textile mills
 - (34) Timber products processing
- 3.1[2]3 UPDES Permit Application Testing Requirements

Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)	...	...	...
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plant	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

(1) The toxic pollutants in each fraction are listed in Table II.
 * Testing required.

TABLE I
 Testing Requirements for Organic Toxic Pollutants
 by Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction (1)			
	Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	...
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	(*)
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	(*)
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)

TABLE II
 Organic Toxic Pollutants in Each of Four Fractions in Analysis
 by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) VOLATILES

- 1V acrolein
- 2V acrylonitrile
- 3V benzene
- 4V bis (chloromethyl) ether
- 5V bromoform
- 6V carbon tetrachloride
- 7V chlorobenzene
- 8V chlorodibromomethane
- 9V chloroethane
- 10V 2-chloroethyl vinyl ether
- 11V chloroform
- 12V dichlorobromomethane
- 13V dichlorodifluoromethane
- 14V 1,1-dichloroethane
- 15V 1,2-dichloroethane
- 16V 1,1-dichloroethylene
- 17V 1,2-dichloropropane
- 18V 1,2-dichloropropyl ether
- 19V ethyl benzene
- 20V methyl bromide
- 21V methyl chloride
- 22V methylene chloride
- 23V 1,1,2,2-tetrachloroethane
- 24V tetrachloroethylene
- 25V toluene
- 26V 1,2-trans-dichloroethylene
- 27V 1,1,1-trichloroethane
- 28V 1,1,2-trichloroethane
- 29V trichloroethylene
- 30V trichlorofluoromethane
- 31V vinyl chloride

(b) ACID COMPOUNDS

- 1A 2-chlorophenol
- 2A 2,4-dichlorophenol
- 3A 2,4-dimethyl phenol
- 4A 4,6-dinitro-o-cresol
- 5A 2,4-dinitrophenol
- 6A 2-nitrophenol
- 7A 4-nitrophenol
- 8A p-chloro-m-cresol
- 9A pentachlorophenol
- 10A phenol
- 11A 2,4,6-trichlorophenol

(c) BASE/NEUTRAL

- 1B acenaphthene
- 2B acenaphthylene

- 3B anthracene
- 4B benzi di ne
- 5B benzo(a)anthracene
- 6B benzo(a)pyrene
- 7B 3, 4-benzofluoranthene
- 8B benzo(ghi)perylene
- 9B benzo(k)fluoranthene
- 10B bis(2-chloroethoxy)methane
- 11B bis(2-chloroethyl)ether
- 12B bis(2-chloroethyl)ether
- 13B bis(2-ethylhexyl)phthalate
- 14B 4-bromophenyl phenyl ether
- 15B butylbenzyl phthalate
- 16B 2-chloronaphthalene
- 17B 4-chlorophenyl phenyl ether
- 18B chrysene
- 19B dibenzo(a, h)anthracene
- 20B 1, 2-dichlorobenzene
- 21B 1, 3-dichlorobenzene
- 22B 1, 4-dichlorobenzene
- 23B 3, 3-dichlorobenzidine
- 24B diethyl phthalate
- 25B dimethyl phthalate
- 26B di-n-butyl phthalate
- 27B 2, 4-dinitrotoluene
- 28B 2, 6-dinitrotoluene
- 29B di-n-octyl phthalate
- 30B 1, 2-diphenylhydrazine (as azobenzene)
- 31B fluoranthene
- 32B fluorene
- 33B hexachlorobenzene
- 34B hexachlorobutadiene
- 35B hexachlorocyclopentadiene
- 36B hexachloroethane
- 37B indeno(1, 2, 3-cd)pyrene
- 38B isophorone
- 39B naphthalene
- 40B nitrobenzene
- 41B N-nitrosodimethylamine
- 42B N-nitrosodipropylamine
- 43B N-nitrosodiphenylamine
- 44B phenanthrene
- 45B pyrene
- 46B 1, 2, 4-trichlorobenzene

(d) PESTICIDES

- 1P aldrin
- 2P alpha-BHC
- 3P beta-BHC
- 4P gamma-BHC
- 5P delta-BHC
- 6P chlordane
- 7P 4, 4'-DDT
- 8P 4, 4'-DDE
- 10P dieldrin
- 11P alpha-endosulfan
- 12P beta-endosulfan
- 13P endosulfan sulfate
- 14P endrin
- 15P endrin aldehyde
- 16P heptachlor
- 17P heptachlor epoxide
- 18P PCB-1242
- 19P PCB-1254
- 20P PCB-1221
- 21P PCB-1232
- 22P PCB-1248
- 23P PCB-1260
- 24P PCB-1016
- 25P toxaphene

TABLE III
Other Toxic Pollutants; Metals, Cyanide, and Total Phenols

- (a) Antimony, Total
- (b) Arsenic, Total
- (c) Beryllium, total
- (d) Cadmium, Total
- (e) Chromium, Total
- (f) Copper, Total
- (g) Lead, Total
- (h) Mercury, Total
- (i) Nickel, Total
- (j) Selenium, Total
- (k) Silver, Total
- (l) Thallium, Total
- (m) Zinc, Total
- (n) Cyanide, Total
- (o) Phenols, Total

TABLE IV
Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present

- (a) Bromide
- (b) Chlorine, Total Residual
- (c) Color
- (d) Fecal Coliform
- (e) Fluoride
- (f) Nitrate-Nitrite
- (g) Nitrogen, total Organic
- (h) Oil and Grease
- (i) Phosphorus, Total
- (j) Radioactivity
- (k) Sulfate
- (l) Sulfide
- (m) Sulfite
- (n) Surfactants
- (o) Aluminum, Total
- (p) Barium, Total
- (q) Boron, Total
- (r) Cobalt, Total
- (s) Iron, Total
- (t) Magnesium, Total
- (u) Molybdenum, Total
- (v) Manganese, Total
- (w) Tin, Total
- (x) Titanium, Total

TABLE V
28 Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present

- (a) Toxic Pollutants - Asbestos
- (b) Hazardous Substances
 1. Acetaldehyde
 2. Allyl alcohol
 3. Allyl chloride
 4. Amyl acetate
 5. Aniline
 6. Benzotrifluoride
 7. Benzyl chloride
 8. Butyl acetate
 9. Butylamine
 10. Captan
 11. Carbaryl
 12. Carbofuran
 13. Carbon disulfide

14. Chlorpyrifos
15. Coumaphos
16. Cresol
17. Crotonaldehyde
18. Cyclohexane
19. 2,4-D(2,4-Dichlorophenoxy acetic acid)
20. Diazinon
21. Dicalba
22. Dichlobenil
23. Dichlorone
24. 2,2-Dichloropropionic acid
25. Dichlorvos
26. Diethylamine
27. Dimethylamine
28. Dinitrobenzene
29. Diquat
30. Disulfoton
31. Diuron
32. Epichlorohydrin
33. Ethanolamine
34. Ethion
35. Ethylene diamine
36. Ethylene dibromide
37. Formaldehyde
38. Furfural
39. Guthion
40. Isoprene
41. Isopropanolamine dodecylbenzenesulfonate
42. Kelthane
43. Kepone
44. Malathion
45. Mercaptodimethur
46. Methoxychlor
47. Methyl mercaptan
48. Methyl methacrylate
49. Methyl parathion
50. Mevinphos
51. Mexacarbate
52. Monoethylamine
53. Monomethylamine
54. Naled
55. Npathenic acid
56. Nitrotoouene
57. Parathion
58. Phenol sulfanate
59. Phosgene
60. Propargite
61. Propylene oxide
62. Pyrethrins
63. Quinoline
64. Resorcinol
65. Strontium
66. Strychnine
67. Styrene
68. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
69. TDE(Tetrachlorodiphenyl ethane)
70. 2,4,5-TP (2-(2,4,5-trichlorophenoxy)propanoic acid)
71. Trichlorofan
72. Triethanolamine dodecylbenzenesulfonate
73. Triethylamine
74. Trimethylamine
75. Uranium
76. Vanadium
77. Vinyl Acetate
78. Xylene
79. Xylenol
80. Zirconium

3.1[3] 4 Application Requirements of R317-8-3.[7]8(7)(e) Suspended for Certain Categories and Subcategories of Primary Industries. The application requirements of R317-8-3.[4]5 (7)(c) are suspended for the following categories and subcategories of the primary industries listed in R317-8-3.1[0]1:

(1) Coal mines.

(2) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

R317-8-4. Permit Conditions.

4.1 Conditions Applicable to All UPDES Permits. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all UPDES permits, the Executive Secretary will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

(1) Duty to Comply.

(a) General requirement. The permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions for toxic pollutants and with standards for sewage

sludge use or disposal established by the State within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (40 CFR, 129).

2. The Utah Water Quality Act, in 19-5-115, provides that any person who violates the Act, or any permit, rule, or order adopted under it is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or with gross negligence violates the Act, or any permit, rule or order adopted under it is subject to a fine of not more than \$25,000 per day of violation. Any person convicted under 19-5-115 a second time shall be punished by a fine not exceeding \$50,000 per day.

(2) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required in R317-8-3.1.

(3) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.)

(4) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the UPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property Rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Executive Secretary, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, including an authorized contractor acting as a representative of the Executive Secretary) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water ~~[Pollution Control]~~Quality Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) and times analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding \$10,000 or imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified as indicated in R317-8-3.[3]4. The Utah Water ~~[Pollution Control]~~Quality Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in R317-8-8; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit nor to notification requirements under R317-8-4.1(15).

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Executive Secretary for reporting results of monitoring of sludge use or disposal practices.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Executive Secretary.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the

circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Executive Secretary in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under R317-8-4.1(12) (d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in R317-8-4.1(12)(f).

(h) Other Information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in its permit application or in any report to the Executive Secretary, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c) 1 and 2 or R317-8-4.1(13)(d).

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of bypass.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in R317-8-4.1(12)(f).

(d) Prohibition of Bypass.

1. Bypass is prohibited, and the Executive Secretary may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated

wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(c).

2. The Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary determines that it will meet the three conditions listed in R317-8-4.1(13)(d) a, b, and c.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional Conditions Applicable to Specified Categories of UPDES Permits. The following conditions, in addition to others set forth in these regulations apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12), (13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Executive Secretary as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for

2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.[4]5(7) or (10).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l).

b. One milligram per liter (1 mg/l) for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.[4]5(9).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Executive Secretary of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES regulations if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Executive Secretary under R317-8[8]-3.[8]2(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

[f1]7 The status of implementing the components of the storm water management program that are established as permit conditions;

[f2]7 Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.[8]2(3)(b)3; and

[f3]7 Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.[8]2(3)(b)4 and 3.[8]2(3)(b)5;

[f4]7 A summary of data, including monitoring data, that is accumulated throughout the reporting year;

[f5]7 Annual expenditures and budget for year following each annual report;

[f6]7 A summary describing the number and nature of enforcement actions, inspections, and public education programs;

[f7]7 Identification of water quality improvements or degradation.

4.2 Establishing Permit Conditions. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or

revocation or reissuance of a permit, to the extent allowed in R317-8-5.6. New or reissued permits, and to the extent allowed under R317-8-5.6, modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under R317-8-4.1 each UPDES permit will include conditions on a case by case basis to provide for and ensure compliance with all applicable Utah statutory and regulatory requirements and the following, as applicable:

(1) Technology-based effluent limitations and standards, based on effluent limitations and standards promulgated under Section 19-5-104 of the Utah Water Quality Act or new source performance standards promulgated under Section 19-5-104 of the Utah Water Quality Act, on case-by-case effluent limitations, or a combination of the two in accordance with R317-8-7.1.

(2) Toxic Effluent Standards and Other Effluent Limitations. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Executive Secretary shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener Clause. For any discharger within a primary industry category, as listed in R317-8-3.1[Ø]_, requirements will be incorporated as follows:

(a) On or before June 30, 1981:

1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.

(b) On or after the statutory deadline set forth in Section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by R317-8-4.2(3)(a)1.

(c) The Executive Secretary shall promptly modify or revoke and reissue any permit containing the clause required under R317-8-4.2(3)(a)1 to incorporate an applicable effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Executive Secretary shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The Executive Secretary may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in

the permit, or controls a pollutant or practice not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto, including State narrative criteria for water quality.

1. Permit limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Executive Secretary determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Executive Secretary shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

3. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

4. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit will contain effluent limits for whole effluent toxicity.

5. Except as provided in R317-8-4.2, when the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit will contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Executive Secretary determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in R317-8-4.2(4)(2), that chemical specific limits for effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

6. Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard the Executive Secretary will establish effluent limits using one or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Executive Secretary determines will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an

explicit State policy or regulation interpreting its narrative water quality criteria supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents:

b. Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitations;

(ii) The fact sheet as required by .4 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the Executive Secretary to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the Executive Secretary shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under the Utah Water Quality Act;

(c) Conform to applicable water quality requirements when the discharge affects a state other than Utah;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations.

(e) Ensure consistency with the requirements of any Utah Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under R317-8-7.3.

(5) Technology-based Controls for Toxic Pollutants. Limitations established under R317-8-4.2 (1), (2), or (4) to control pollutants meeting the criteria listed in R317-8-4.2(5)(a) will be included in the permit, if applicable. Limitations will be established in accordance with R317-8-4.2(5)(6). An explanation of the development of these limitations will be included in the fact sheet under R317-8-6.4.

(a) Limitations will control all toxic pollutants which:

1. The Executive Secretary determines, based on information reported in a permit application under R317-8-3.[#]5(7) and (10), or in a notification under R317-8-4.1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3)(a),(b) and (c).

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the Executive Secretary, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by R317-8-7.1(3)(a), (b) and (c).

(6) Notification Level. A "notification level" which exceeds the notification level of R317-8-4.1(15) upon a petition from the permittee or on the Executive Secretary's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3).

(7) Twenty-Four (24) Hour Reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under R317-8-4.1(12)(f) shall be listed in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring Requirements. The permit will incorporate, as applicable in addition to R317-8-4.1(12) the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate, including pollutants in internal waste streams under R317-8-4.3(8); pollutants in intake water for net limitations under R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under R317-8-4.3(5); pollutants subject to notification requirements under R317-8-4.1(15)(a); and pollutants in sewage sludge or other monitoring as specified in State rules for sludge use or disposal or as determined to be necessary pursuant to R317-8-2.1.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) ~~[Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; this shall be as specified in State rules governing sludge use or disposal, but in no cases less than once a year.]~~ Except as provided in paragraphs (8)(d) and (8)(e) of this section, requirements to report monitoring results shall be

established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be specified in R317-8-1.10(9) (where applicable), but in no case less than once a year.

(c) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(d) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (c) above) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

1. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

2. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

3. Such report and certification be signed in accordance with R317-8-3.4; and

4. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(e) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under R317-8-4.1(12)(a),(d),(e), and (f) at least annually.

(9) Pretreatment Program for POTWs. If applicable to the facility the permit will incorporate as a permit condition, requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the UPDES regulations.

(b) Submit a local program when required by and in accordance with R317-8-8.[9]10 to assure compliance with pretreatment standards to the extent applicable in the UPDES regulations. The local program will be incorporated into the permit as described in R317-8-8.[9]10. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(c) For POTWs which are "sludge-only facilities", a requirement to develop a pretreatment program under R317-8-8 when the Executive Secretary determines that a pretreatment program is necessary to assure compliance with State rules governing sludge use or disposal.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Authorized under the Utah Water Quality Act as amended and the UPDES rule for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible, or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Utah Water Quality Act, as amended.

(11) Reissued Permits.

(a) Except as provided in R317-8-4.2(11)(b), when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under R317-8-5.6.

(b) In the case of effluent limitations established on the basis of Section 19-5-104 of the Utah Water Quality Act, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated by EPA under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions--A permit with respect to which R317-8-4.2(11)(b) applies may be renewed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; and

2. a. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

b. The Executive Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;

3. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

4. The permittee has received a permit modification under R317-8-5.6; or

5. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(d). Limitations. In no event may a permit with respect to which R317-8-4.2(11)(b) applies be renewed, reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of the water quality standard applicable to such waters.

(12) Privately Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any

user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the Executive Secretary may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Executive Secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants or loans made by the Executive Secretary to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage Sludge. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which rules have been established, in accordance with any applicable regulations.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned to require that the discharge comply with any applicable federal regulation promulgated by the Secretary of the department in which the Coast Guard is operating, and such condition will establish specifications for safe transportation, handling, carriage, and storage of pollutants, if applicable.

(16) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with R317-8-6.9 will be included.

(17) State standards for sewage sludge use or disposal. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under Section 19-5-104 of the Utah Water Quality Act, and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Executive Secretary may initiate proceedings under these rules to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(18) Qualifying State or local programs.

(a) For storm water discharges associated with small construction activity identified in R317-8-3.9(6)(e), the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. Where a qualifying State or local erosion and sediment control program is one that includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions of appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges); and

4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(b) For storm water discharges from construction activity identified in R317-8-3.9(6)(d)10., the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. A qualifying State or local erosion and sediment control program is one that includes the elements listed in paragraph (18)(a) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.

4.3 Calculating UPDES Permit Conditions. The following provisions will be used to calculate terms and conditions of the UPDES permit.

(1) Outfalls and Discharge Points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided under R317-8-4.2(10) with BMPs where limitations are infeasible; and under R317-8-4.3(8), limitations on internal waste streams.

(2) Production-Based Limitations.

(a) In the case of POTWs, permit effluent limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations. The Executive Secretary may include a condition establishing alternate permit standards or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(c) For the automotive manufacturing industry only, the Executive Secretary may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the Executive Secretary at the time the application is submitted that its actual production, as indicated in R317-8-4.3(2)(b)1, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(d) If the Executive Secretary establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the Executive Secretary at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the

permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Executive Secretary under R317-8-4.3(2)(d)1, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total recoverable metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or total form; or

(b) In establishing permit limitations on a case-by-case basis under R317-8-7, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Utah Water ~~Pollution Control~~ Quality Act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in R317-8-1.5(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge for example, not to exceed 2 kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure, (for example, shall not contain at any time more than 0.05 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If, in establishing permit limitations on a case-by-case basis under R317-8-7.1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation; (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in effluent guidelines and standards provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or used to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Executive Secretary may waive this requirement if he finds that no environmental degradation will result.

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal Waste Streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by R317-8-4.2(8) shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under R317-8-6.4 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under 10 meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of Pollutants Into Wells, Into POTWs, or by Land Application. Permit limitations and standards shall be calculated as provided in R317-8-2.6.

(10) Secondary Treatment Information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, except that Utah effluent limits for secondary treatment will be used.

4.4 Stays of Contested Permit Conditions.

(1) Stays

(a) If a request to the Executive Director for review of a UPDES permit is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in a hearing on a UPDES permit, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final action by the Executive Director. If the permit involves a new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, source or discharger pending final action by the Executive Director.

(b) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources shall be identified by the Executive Director. All other provisions of the permit for the existing facility or source shall remain fully effective and enforceable.

(2) Stays based on cross effects. A stay may be granted based on the grounds that an appeal to the Executive Director of one permit may result in changes to another state-issued permit only when each of the permits involved has been appealed to the Executive Director and he or she has accepted each appeal.

R317-8-5. Permit Provisions.

5.1 Duration of Permits

(1) UPDES permits shall be effective for a fixed term not to exceed 5 years.

(2) Except as provided in R317-8-3.1(4) (d), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(3) The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

(4) A permit that would expire on or after the Federal statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

5.2 Schedules of Compliance

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Utah Water Quality Act, as amended, and regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(b) The first UPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance

with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing discharges, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before commencement of discharge.

(c) Interim dates. Except as provided in R317-8-5.2(2)(a)2 if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates will not exceed six months.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates, (but not more than one interim date per calendar year per project phase or segment), for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative Schedules of Compliance. A UPDES permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for UPDES sources), rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the Executive Secretary may issue or modify a permit to contain two schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One schedule shall lead to timely compliance no later than the statutory deadline in the CWA;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance with the applicable requirements no later than the deadline specified in R317-8-7;

4. Each permit containing two schedules will include a requirement that after the permittee has made a final decision under R317-8-5.2(2)(c), it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as a resolution of the Board of Directors of a corporation.

5.3 Requirements for Recording and Reporting of Monitoring Results. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R317-8-4.1 and 4.2. Reporting shall be no less frequent than specified in the above section.

5.4 Effect of a Permit

(1) Except for any toxic effluent standards and prohibitions included in R317-8-4.1(1)(b) and any standards adopted by the State for sewage sludge use or disposal, compliance with a UPDES permit during its term constitutes compliance, for purposes of enforcement, with the UPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R317-8-5.6 and 5.7.

(2) The issuance of a permit does not convey any property rights or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(4) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the UPDES program.

5.5 Transfer of Permits

(1) Transfers by Modification. Except as provided in R317-8-5.5(2) a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under R317-8-5.6 or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the UPDES regulations.

(2) Automatic Transfers. As an alternative to transfers under subsection (1) of this section, any UPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Executive Secretary at least thirty (30) days in advance of the proposed transfer date in R317-8-5.5(2)(b).

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The Executive Secretary does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under R317-8-5.6(3). If this notice is not received, the transfer is effective on the date specified in the agreement under R317-8-5.5(2)(b).

5.6 Modification or Revocation and Reissuance of Permit

The Executive Secretary may determine whether or not one or more of the causes, listed in R317-8-5.6(1) and (2) for modification or revocation and reissuance or both, exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in R317-8-5.6(3) for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in R317-8-6 must be followed.

(1) Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of revised permit conditions which are different or absent in the existing permit.

(b) Information. Information received by the Executive Secretary regarding permitted activities may show cause for modification. UPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, (except for revised regulations, guidance or test methods) and would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For UPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New Regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued permits may be modified during their terms for this case only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on promulgated effluent limitation guidelines or promulgated water quality standards; or the Secondary Treatment Regulations; and

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved the Executive Secretary's action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with R317-8-6.1 within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with R317-8-6.2 within ninety (90) days of judicial remand.

(d) Compliance Schedules. A permit may be modified if the Executive Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a UPDES compliance schedule be modified to extend beyond an applicable statutory deadline in R317-8-7.

(e) In addition the Executive Secretary may modify a permit:

1. When the permittee has filed a request for a variance under R317-8-2.3, R317-8-2.7 or for "fundamentally different factors" within the time specified in R317-8-3 or R317-8-7.[6]7(8)a (and the Executive Secretary processes the request under the applicable provisions).

2. When required to incorporate an applicable toxic effluent standard or prohibition under R317-8-4.2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under R317-8-4.2(3) for toxic effluent limitations and standards for sewage sludge use or disposal.

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under R317-8-4.3(8).

5. When a discharger is no longer eligible for net limitations, as provided in R317-8-4.3(8).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(2)(c).

8. To establish a "notification level" as provided in R317-8-4.2(6).

9. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility in the case of the POTW which has received a grant from EPA of 100% of the cost to modify or replace the facilities. In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

10. Upon failure of the Executive Secretary to notify an affected state whose waters may be affected by a discharge from Utah.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(2) Causes for Modification or Revocation and Reissuance. The following are causes to modify or alternatively revoke or reissue a permit:

(a) Cause exists for termination under R317-8-5.7 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(b) The Executive Secretary has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the Executive Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of R317-8-6. Any permit modification not processed as a minor modification under this section must be made for cause and with a Section R317-8-6 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of a facility where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Executive Secretary;

(e) Change the construction schedule for a discharger which is a new source. No such change shall affect a disclosure obligation to have all pollution control equipment installed and in operation prior to discharge; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in R317-8-8.[9]10 (or a modification thereto that has been approved in accordance with the procedures in R317-8-8.[+5]16 as enforceable conditions of the POTW's permits).

5.7 Termination of Permit

(1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) When there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; for example, plant closure or termination of discharge by connection to a POTW.

(2) The Executive Secretary will follow the applicable procedures of R317-8-6.2 in terminating UPDES permits under this section.

R317-8-6. Review Procedures.

6.1 Review of the Application

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the Executive Secretary an application for the permit as required under R317-8-3.1. Applications are not required for UPDES general permits. (However, operators who elect to be covered by a general permit shall submit written notification to the Executive Secretary at such time as the Executive Secretary indicates in R317-8-6.3)

(2) The Executive Secretary will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by R317-8-3.1.

(3) Permit applications must comply with the signature and certification requirements of R317-8-3.1.

(4) Each application submitted by a UPDES new source or UPDES new discharger should be reviewed for completeness by the Executive Secretary within thirty (30) days of its receipt. Each application for a UPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Executive Secretary shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Executive Secretary may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Utah Water ~~Pollution Control~~ Quality Act, as amended and regulations promulgated pursuant thereto.

(6) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.

(7) The effective date of an application is the date on which the Executive Secretary notified the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the Executive Secretary shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Executive Secretary intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under the UPDES regulations.

6.2 Review Procedures for Permit Modification, Revocation and Reissuance, or Termination of Permits

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Executive Secretary's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Executive Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3) If the Executive Secretary tentatively decides to modify or revoke and reissue a permit under R317-8-5.6, he or she shall prepare a draft permit under R317-8-6.3 incorporating the proposed changes. The Executive Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Executive Secretary shall require the submission of a new application.

(a) In a permit modification under .2, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under .2, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in R317-8-5.6(3) are not subject to the requirements of .2.

(4) If the Executive Secretary tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

6.3 Draft Permits

(1) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Executive Secretary tentatively decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Executive Secretary's final decision (under R317-8-6.11) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R317-8-6.3(4).

(3) If the Executive Secretary tentatively decides to issue a UPDES general permit, he or she shall prepare a draft general permit in accordance with R317-8-6.3(4).

(4) If the Executive Secretary decides to prepare a draft permit he or she shall prepare a draft permit that contains the following information:

- (a) All conditions under R317-8-4.1;
- (b) All compliance schedules under R317-8-5.2;
- (c) All monitoring requirements under R317-8-5.3;
- (d) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R317-8-3, 8-4, 8-5, 8-6, and 8-7 and all variances that are to be included.

(5) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Executive Secretary will give notice of opportunity for a public hearing, issue a final decision and respond to comments. A request for a hearing may be made pursuant to the Utah Water ~~[Pollution Control]~~Quality Act, as amended, following the issuance of a final decision.

(6) Statement of Basis. A statement of basis shall be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

6.4 Fact Sheets

(1) A fact sheet shall be prepared for every draft permit for a major UPDES facility or activity, for every UPDES general permit, for every UPDES draft permit that incorporates a variance or requires an explanation under R317-8-6.4(4), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the Executive Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Executive Secretary shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

- (a) A brief description of the type of facility or activity which is the subject of the draft permit;
- (b) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

- 1. The beginning and ending dates of the comment period and the address where comments will be received;
- 2. Procedures for requesting a hearing and the nature of that hearing; and
- 3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, or standards for sewage sludge use and disposal, including a citation to the applicable effluent limitation guideline or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

- 1. Limitations to control toxic pollutants under R317-8-4.2(5);
- 2. Limitations on internal waste streams under R317-8-4.3(8);
- 3. Limitations on indicator pollutant;
- 4. Limitations set on a case-by-case basis under R317-8-7.1(3)(b) or (c).

(b) For every permit to be issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Executive Secretary's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

6.5 Public Notice of Permit Actions and Public Comment Period

(1) Scope.

(a) The Executive Secretary will give public notice that the following actions have occurred:

- 1. A permit application has been tentatively denied under R317-8-6.3(2); or
- 2. A draft permit has been prepared under R317-8-6.3(4);
- 3. A hearing has been scheduled under R317-8-6.7; and
- 4. A UPDES new source determination has been made in accordance with the definition in R317-8-1.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under .2. Written notice of the denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R317-8-6.5(1) will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(3) Methods. Public notice of activities described in R317-8-6.5(1)(a) will be given by the following methods:

(a) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.):

1. The applicant, except for UPDES general permittees, and Region VIII, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Utah Historic Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The Executive Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

6. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and each State agency having any authority under State law with respect to construction or operation of such facility.

7. Any other agency which the Executive Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act, NPDES, 404, or sludge management permit).

(b) For major permits, UPDES general permits, and permits that include sewage sludge and application plans, the Executive Secretary will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Utah law; and

(d) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices issued under this part shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of UPDES draft general permits under R317-8-2.5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for UPDES general permits when there is no application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including

copies of the draft permit or draft general permit as the case may be, statement of basis or fact sheet, and the application; and

5. A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. For UPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

7. Any additional information considered necessary or appropriate.

(b) Public notices for hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

6.6 Public Comments and Requests for Public Hearings

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

6.7 Public Hearings

(1) The Executive Secretary shall hold a public hearing when he or she finds on the basis of request(s), a significant degree of public interest in draft permits. The Executive Secretary also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

6.8 Obligation to Raise Issues and Provide Information During the Public Comment Period

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under R317-8-6.5. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of state or federal statutes and regulations, EPA or the Executive Secretary's documents of general applicability, or other generally available reference materials. Persons making comment shall make supporting material not already included in the administrative record available to the Executive Secretary. Additional time shall be granted under R317-8-6.5 to the extent that a person desiring to comment who requests additional time demonstrates need for such time. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a request for a hearing under R317-8-6.13.

6.9 Conditions Requested by the Corps of Engineers and Other Government Agencies

(1) If, during the comment period for a UPDES draft permit, the District Engineer of the Corps of Engineers advises the Executive Secretary in writing that anchorage and navigation of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Executive Secretary that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Executive Secretary shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the UPDES permit for the duration of that stay.

(2) If, during the comment period, the U.S. Fish and Wildlife Service or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Executive Secretary in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Executive Secretary may include the

specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Utah Water Quality Act, as amended, and of CWA.

(3) In appropriate cases the Executive Secretary may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

6.10 Reopening of the Public Comment Period

(1) The Executive Secretary may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty days after public notice under paragraph (2) of this section, set by the Executive Secretary. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than twenty days after the date set for filing of the material, set by the Executive Secretary.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.

(3) On his own motion or on the request of any person, the Executive Secretary may direct that the requirements of paragraph (1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give persons desiring to comment a reasonable opportunity to comply with the requirements of this section. Persons desiring to comment may request longer comment periods and they shall be granted under R317-8-6.5 to the extent they appear necessary.

(5) If any data information or arguments submitted during the public comment period, including information or arguments required under R317-8-6.8, appear to raise substantial new questions concerning a permit, the Executive Secretary may take one or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under R317-8-6.3;

(b) Prepare a revised statement of basis under R317-8-6.3(6) a fact sheet or revised fact sheet under R317-8-6.4 and reopen the comment period under R317-8-6.10; or

(c) Reopen or extend the comment period under R317-8-6.5 to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under R317-8-6.5 shall define the scope of the reopening.

(7) For UPDES permits, the Executive Secretary may also, in the circumstances described above, elect to hold further

proceedings. This decision may be combined with any of the actions enumerated in paragraph (5) of this section.

(8) Public notice of any of the above actions shall be issued under R317-8-6.5.

6.11 Issuance and Effective Date of Permit

(1) After the close of the public comment period under R317-8-6.5, the Executive Secretary will issue a final permit decision. The Executive Secretary will notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision under R317-8-6.11(1) unless:

(a) A later effective date is specified in the decision; or an evidentiary hearing is requested as per these regulations; or

(b) A stay is granted pursuant to the Utah Water ~~Pollution Control~~ Quality Act, as amended and R317-8-6.13;

(c) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(3) The order or determination which is a condition precedent to requesting a hearing under the Utah Water Quality Act, as amended and R317-8-6.13 shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the order is entered by the Executive Secretary and shall not begin on the date the permit decision becomes effective.

6.12 Response to Comments

(1) At the time that any final permit decision is issued under R317-8-6.11, the Executive Secretary shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response will fully consider all comments resulting from any hearing conducted under this regulation.

(c) The response to the comments shall be available to the public. Any request for a hearing on the response shall be filed according to procedures specified in the Utah Water Quality Act, as amended and rules promulgated pursuant thereto.

6.13 Hearings Under the Water Quality Act, As Amended

(1) A determination under R317-8-6.11, when issued by the Executive Secretary, will be subject to a request for a hearing pursuant to the Utah Water Quality Act, as amended.

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to the Utah Water Quality Act, as amended.

(3) Any hearing held pursuant to this section will be subject to the provisions of the Utah Water Quality Act, as amended.

(4) Failure to raise issues pursuant to R317-8-6.8 will not preclude an aggrieved person from making a demand for a hearing pursuant to the Utah Water Quality Act, as amended.

R317-8-7. Criteria and Standards.

7.1 Criteria and Standards for Technology-Based Treatment Requirements

(1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements and represents the minimum level of control that must be imposed in a UPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

(a) For POTW's effluent limitations based upon:

1. Utah secondary treatment from date of permit issuance; and

2. The best practicable waste treatment technology from date of permit issuance.

(b) For dischargers other than POTWs, except as otherwise provided, effluent limitations requiring:

1. The best practicable control technology currently available (BPT) --

a. For effluent limitations promulgated after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than May 31, 1989;

c. For all other BPT effluent limitations compliance is required from the date of permit issuance.

2. For conventional pollutants the best conventional pollutant control technology (BCT) --

a. For effluent limitations promulgated under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case (BPJ) basis in a permit issued after February 4, 1987 compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

c. For all other BCT effluent limitations compliance is required from the date of permit issuance.

3. For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) --

a. For effluent limitations established under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For permits issued on a case-by-case (BPJ) basis after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under Section 304(b) of the CWA and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

4. For all toxic pollutants other than those listed on Committee Print No. 95-30, effluent limitations based on BAT --

a. For effluent limitations promulgated under Section 304(b) of the CWA, compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

5. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT --

a. For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

(2) Variances and Extensions.

(a) The following variance from technology-based treatment requirements may be applied for under R317-8-2 for dischargers other than POTWs:

1. Economic variance from BAT, as indicated in R317-8-2.3(2);

2. Section 301(g) water quality related variance from BAT;

3. Thermal variance from BPT, BCT and BAT, under R317-8-7.4, may be authorized.

(b) An extension of the BPT deadline may be applied for under R317-8-2.3(3) for dischargers other than POTW's, for use of innovative technology. Compliance extensions may not extend beyond July 1, 1987.

(3) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(a) Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variance from these effluent limitations under R317-8-2.3(1) and R317-8-7.3;

(b) On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors and shall consider:

1. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information.

2. Any unique factors relating to the applicant.

(c) Through a combination of the methods in paragraphs (a) and (b) of this section. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutant, other aspects or activities are subject to regulation on case-by-case basis in order to carry out the provisions of the CWA;

(d) Limitations developed under paragraph (c)2 of this section may be expressed, where appropriate, in terms of toxicity provided it is shown that the limits reflect the appropriate requirements of the act;

(e) In setting case-by-case limitations pursuant to R317-8-7.1(3), the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirement:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. The cost of achieving such effluent reduction; and

e. Non-water quality environmental impact (including energy requirements).

(f) Technology-based treatment requirements are applied prior to or at the point of discharge.

(4) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) The discharger agrees to waive any opportunity to request a variance under R317-8-2.3;

(c) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(5) Technology-based effluent limitations will be established for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(6)(a) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or limit for a nonconventional pollutant which shall not be subject to modification where:

1. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

2.a. The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

b. The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(b) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

1. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substances; or

2.a. The limitation reflects BAT-level, co-control of discharges, or an appropriate level of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

b. The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

d. Hazardous substances which are also toxic pollutants are subject to R317-8-7.1(6).

(3) The Executive Secretary may not set more stringent limits under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substances controlled by the limit were limited directly.

(d) Toxic pollutants identified under R317-8-7.1(6) remain subject to R317-8-4.1(15) which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

7.2. Criteria for Issuance of Permits to Aquaculture Projects

(1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under the Utah Water Quality Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are UPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the UPDES regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) No UPDES permit will be issued to an aquaculture project unless:

1. The Executive Secretary determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that if the species to be cultivated in the aquacultural project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The Executive Secretary determines that the crop will not have significant potential for human health hazards resulting from its consumption;

5. The Executive Secretary determines that migration of pollutants from the designated project area to waters of the State outside of the aquaculture project will not cause or contribute to a violation of the water quality or applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a 208 plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

7.3 Criteria and Standards for Determining Fundamentally Different Factors

(1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations required by effluent limitations guidelines hereinafter referred to as "national limits", should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated except for best practicable treatment (BPT) standards for stream electric plants.

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(g) of the Clean Water Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under R317-8-2.3(1). In addition, such a variance may be proposed by the Executive Secretary in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section shall be approved only if:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limit; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of R317-8-6.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference; and

2. The alternative effluent limitation or standard will ensure compliance with the UPDES regulations and the Utah Water Quality Act.

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw wasteload of the applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

6. Cost of compliance with required control technology.

(c) A variance request or portion of such a request under this section will not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in R317-8-7.1.

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

3. The discharger's ability to pay for the required waste-treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this regulation shall be submitted in duplicate to the Executive Secretary in accordance with R317-8-6.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The person making the request shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of

legal proceedings, and all written and printed documentation including records of communication relevant to the regulations.

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph 1 of this subsection; and

3. The appropriate requirements of subsection 2 of this section have been met.

7.4 Criteria for Determining Alternative Effluent Limitations

(1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations will be used in UPDES permits and will be referred to as R317-8-2.3(4) variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under R317-8-2.3(4).

(b) "Representative important species" means species which are representative of a balanced, indigenous community of shellfish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with R317-8-4.1(1)(6) and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to R317-8-2.3(4).

(3) Early screening of applications for R317-8-2.3(4) variance.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

4. Such data and information as may be available to assist the Executive Secretary in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the Executive Secretary at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the Executive Secretary's approval a detailed plan of study which the discharger will undertake to support its R317-8-2.3(4)

demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies: representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Executive Secretary will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Executive Secretary subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the administration.

(c) Any application for the renewal of R317-8-2.3(4) variance shall include only such information described in R317-8-7.4(3)(a) and (b) and R317-8-6 as the Executive Secretary requests within sixty (60) days after receipt of the permit application.

(d) The Executive Secretary shall promptly notify the Secretaries of the U.S. Departments of Commerce and Interior and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a R317-8-2.7 (4) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the Executive Secretary.

(4) Criteria and standards for the determination of alternative effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the Executive Secretary that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Executive Secretary may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the Administrator under CWA section 304(a) (33 U.S.C. Section 1314(a)) or any other information which may be relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(5) In determining whether or not appreciable harm has occurred, the Executive Secretary will consider the length of time in which the applicant has been discharging and the nature of the discharge.

7.~~4A~~5 Criteria and Standards for Best Management Practices

(1) Purpose and Scope.

Best management practices (BMPs) for ancillary industrial activities shall be reflected in permits, including best management practices promulgated in effluent limitations and established on a case-by-case basis in permits.

(2) Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

(3) Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic or any pollutant listed as hazardous are subject to the requirements of R317-8-7.~~4A~~5 for all activities which may result in significant amounts of those pollutants reaching waters of the State. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

(4) Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable promulgated effluent limitations guideline;

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary. In issuing a permit containing BMP requirements, the Executive Secretary shall consider the following factors:

1. Toxicity of the pollutant(s);
2. Quantity of the pollutants(s) used, produced, or discharged;
3. History of UPDES permit violations;
4. History of significant leaks or spills of toxic or hazardous pollutants;

5. Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commercial fishery); and

6. Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under R317-8-7.~~4A~~5(4)(b) alone or in combination with those required under R317-8-7.~~4A~~5(4)(a).

(d) In addition to the requirements of R317-8-7.~~4A~~5(4)(a) and (b), dischargers covered under R317-8-7.~~4A~~5(4) shall develop and implement a best management practices program in accordance with R317-8-7.~~4A~~5(5) which prevents, or minimizes the potential

for, the release of toxic or hazardous pollutants from ancillary activities to waters of the State.

(5) Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

1. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

2. Establish specific objectives for the control of toxic and hazardous pollutants.

a. Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the State due to equipment failure, improper operation, natural phenomena such as rain or snowfall.

b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

3. Establish specific best management practices to meet the objectives identified under R317-8-7.~~4A~~5(5)(b)2, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the State;

4. The BMP program: a. May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA and 40 CFR Part 151, and Storm Water Pollution Prevention Plans (SWPP), and may incorporate any part of such plans into the BMP program by reference;

b. Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

c. Shall address the following points for the ancillary activities in R317-8-7.4A(3):

- i. Statement of policy;
- ii. Spill Control Committee;
- iii. Material inventory;
- iv. Material compatibility;
- v. Employee training;
- vi. Reporting and notification procedures;
- vii. Visual inspections;
- viii. Preventative maintenance;
- ix. Housekeeping; and
- x. Security.

5. The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Executive Secretary shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of R317-8, resulting in the incorporation of the program (including any modifications of

the program resulting from the permit issuance procedures) into the final permit.

6. Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Executive Secretary for approval. If the Executive Secretary approves the proposed BMP program modification, the permit shall be modified in accordance with R317-8-5.6, provided that the Executive Secretary may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Executive Secretary specifies a later date in the permit.

(c) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Executive Secretary upon request.

(d) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the State.

(e) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under R317-8-7.~~4A~~5(5)(b), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

7.~~5~~6 Toxic Pollutants. References throughout the UPDES regulations establish specific requirements for discharges of toxic pollutants. Toxic pollutants are listed below:

- (1) Acenaphthene
- (2) Acrolein
- (3) Acrylonitrile
- (4) Aldrin/Dieldrin
- (5) Antimony and compounds
- (6) Arsenic and compounds
- (7) Asbestos
- (8) Benzene
- (9) Benzidine
- (10) Beryllium and compounds
- (11) Cadmium and compounds
- (12) Carbon tetrachloride
- (13) Chlordane (technical mixture and metabolites)
- (14) Chlorinated benzenes (other than dichlorobenzenes)
- (15) Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
- (16) Chloroalkyl ethers (chloromethyl, chloroethyl, and moxed ethers)
- (17) Chlorinated naphthalene
- (18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
- (19) Chloroform
- (20) 2-chlorophenol
- (21) Chromium and compounds
- (22) Copper and compounds
- (23) Cyanides
- (24) DDT and metabolites

- (25) Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
- (26) Dichlorobenzidine
- (27) Dichloroethylenes (1,1- and 1,2-dichloroethylene)
- (28) 2,4-dimethylphenol
- (29) Dichloropropane and dichloropropene
- (30) 2,4-dimethylphenol
- (31) Dinitrotoluene
- (32) Diphenylhydrazine
- (33) Endosulfan and metabolites
- (34) Ethylbenzene
- (35) Ethylbenzene
- (36) Fluoranthene
- (37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
- (38) Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
- (39) Heptachlor and metabolites
- (40) Hexachlorobutadiene
- (41) Hexachlorocyclohexane
- (42) Hexachlorocyclopentadiene
- (43) Isophorone
- (44) Lead and compounds
- (45) Mercury and compounds
- (46) Naphthalene
- (47) Nickel and compounds
- (48) Nitrobenzene
- (49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
- (50) Nitrosamines
- (51) Pentachlorophenol
- (52) Phenol
- (53) Phthalate esters
- (54) Polychlorinated biphenyls (PCBs)
- (55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
- (56) Selenium and compounds
- (57) Silver and compounds
- (58) 2,3,7,8-tetrachloro/dibenzo-p-dioxin (TCDD)
- (59) Tetrachloroethylene
- (60) Thallium and compounds
- (61) Toluene
- (62) Toxaphene
- (63) Trichloroethylene
- (64) Vinyl chloride
- (65) Zinc and compounds

7.~~6~~7 Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology

(1) Purpose and Scope. This Section establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

(2) Authority. The Executive Secretary, in consultation with the Administrator, may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available

technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Executive Secretary is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable.

(3) Definitions.

(a) The term "innovative technology" means a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in ~~[8.7.7(4)]~~R317-8-7.8(4) and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

(4) Request for Compliance Extension. The Executive Secretary shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

(5) Permit conditions. The Executive Secretary may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable date is granted:

(a) A requirement that the discharger report annually on the installation, operation and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(6) Signatories to Request for Compliance Extension.

(a) All requests must be signed in accordance with the provisions of R317-8-3.3~~4~~.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgement, the best information available. The Executive Secretary may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

(7) Supplementary Information and Record keeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Executive Director, at his or her request, such other information as the Executive Director may reasonably require to assess the performance and cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

(8) Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in R317-8-2.8. In addition, notwithstanding R317-8-2.3(3), the Executive Secretary may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

(b) A decision on a request for a compliance extension may be appealed under the Utah Water Quality Act to the Executive Director of the Department of Environmental Quality.

R317-8-8. Pretreatment.

8.1 Applicability

(1) This section applies to the following:

(a) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(c) Any new or existing source subject to national pretreatment standards.

(2) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

8.2 Definitions. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards and the UPDES program.

(1) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in R317-8-8.7~~8~~ and 8.8~~9~~ and which has been approved by the Executive Secretary in accordance with R317-8-8.9~~10~~.

(2) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the UPDES program.

(3) "Industrial user" or "user" means a source of indirect discharge.

(4) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder.

(5) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with section 307 (b) and (c) of the CWA, which applies to industrial users. This includes prohibitive discharge limits established pursuant to R317-8-8.[4]5.

([5]6) "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after publication of proposed Pretreatment Standards under section 307(c) of the Federal Clean Water Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section. See R317-8-8.[2A]3 for provisions applicable to this definition.

([6]7) "Pass through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of violation).

([7]8) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

([8]9) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

([9]10) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.

([+0]11) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works which is owned by State or municipality within the State. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

([+1]12) The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

([+2]13) "Significant Industrial User"

(a) Except as provided in R317-8-8.2([+0]11)(a)2, the term Significant Industrial User means:

1. All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Parts 405 through 471; and

2. Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or designated as such by the Control Authority as defined in R317-8-8.[+0]11(1) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria in R317-8-8.1(10)(a)2 has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in R317-8-8.[+0]11(1)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, determine that such industrial user is not a significant industrial user.

([+3]14) "Submission" means (a) a request by a POTW for approval of a pretreatment program to the Executive Secretary or (b) a request by a POTW for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

8.[2A]3 Provisions Applicable to Definitions. The following provisions are applicable to the definition of "New Source" provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located, or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

(3) The production or wastewater generating process of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(4) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of R317-8-8.[2A]3(2) or (3) but otherwise alters, replaces, or adds to existing process or production equipment.

(5) construction of a new source as defined has commenced if the owner or operator has:

(a) Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or equipment: or

2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment: or

3. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

8.[3]4 Local Law. Nothing in this rule is intended to affect any pretreatment requirements, including any standards or prohibitions established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the Executive Secretary.

8.[4]5 National Pretreatment Standards: Prohibited Discharges

(1) General Prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in R317-8-8.[4]5(3) apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State or local pretreatment requirements.

(2) Affirmative Defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in R317-8-8.[4]5(1) and the specific prohibitions in R317-8-8.[4]5(3)(c),(d),(e), and (g) where the user can demonstrate that:

(a) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(b)i. A local limit designed to prevent pass through and/or interference, as the case may be, was developed in accordance with R317-8-8.[4]5(4) for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

ii. If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed in accordance with R317-8-8.[4]5(4) for the pollutant(s) that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's UPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(3) Specific Prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in R315-2-1.

(b) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees C (104 degrees F) unless the Executive Secretary, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(4) When specific limits must be developed by POTW.

(a) POTWs developing POTW pretreatment programs shall develop and enforce specific limits to implement the prohibitions listed in R317-8-8.[4]5(1) and R317-8-8.[4]5(3). Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits;

(b) All other POTWs shall, in cases where pollutants contributed by user(s) result in interference or pass-through, and such violation is likely to recur, develop and enforce specific effluent limits for industrial user(s), and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's UPDES permit or sludge use or disposal practices;

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(5) Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with R317-8-8.[4]5(4), such limits shall be deemed pretreatment standards for purposes of 19-5-108 of the Utah Water Quality Act.

(6) State enforcement actions. If, within 30 days after notice of an interference or pass through violation has been sent by the Executive Secretary to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Executive Secretary may take appropriate enforcement action.

8.[5]6 National Pretreatment Standards: Categorical Standards

(1) In addition to the general prohibitions in R317-8-8.4(1), all indirect dischargers shall comply with national pretreatment standards in 40 CFR Chapter I, Subchapter N. Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(2) Industrial users may request the Executive Secretary to provide written certification on whether an industrial user falls within a particular subcategory. The Executive Secretary will act upon that request in accordance with the procedures in 40 CFR 403.6.

(3) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6 (c) - (e).

8.[6]Z Removal Credits. POTWs may revise pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7.

8.[7]8 POTW Pretreatment Programs: Development by POTW

(1) POTW required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program unless the Executive Secretary exercises the option to assume local responsibility as provided for in R317-8-8.[7]8(6)(b)(12). The Executive Secretary may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant in order to prevent interference or pass through.

(2) Deadline for Program Approval. POTWs identified as being required to develop a POTW pretreatment program under R317-8-8.[7]8(1) shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Executive Secretary of such identification. The POTW pretreatment program shall meet the criteria set forth in R317-8-8.[7]8(6) and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of Approved Programs in Permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in R317-8-8.[7]8(2). The POTW's UPDES permit will be modified under R317-8-5.6(3)(g) to incorporate the approved program conditions as enforceable conditions of the permit.

(4) Incorporation of Compliance Schedules in Permits. If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three years, for the approval of the legal authority, procedures and funding required by paragraph (6) of this subsection.

(5) Cause for Reissuance or Modification of Permits. The Executive Secretary may modify or revoke and reissue a POTW's permit in order to:

(a) Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) Coordinate the issuance of a CWA Section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) Incorporate an approved POTW pretreatment program in the POTW permit;

(d) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(e) Incorporate a modification of the permit approved under R317-8-5.6; or

(f) Incorporate the removal credits established under R317-8-8.[6]Z.

(6) Pretreatment Program Requirements: Development and Implementation by POTW. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its UPDES permit;

2. Require compliance with applicable pretreatment standards and requirements by industrial users;

3. Control, through permit, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under R317-8-8.2(10), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

a. Statement of duration (in no case more than five years);

b. Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

c. Effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits and State and local law;

d. Self-monitoring, sampling, reporting, notification and record keeping requirements, including identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and State and local law;

e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; including but not limited to the reports required in R317-8-8.[7]8(1) of this section;

5. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under R317-8-8.[10]11 of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 19-5-106(4) of the Utah Water Quality Act.

7. Obtain remedies for noncompliance by industrial users with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance and shall have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation of pretreatment standards and requirements by industrial users. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section R317-8-8.15 by November 16, 1989.

8. Pretreatment requirements enforced through the remedies set forth in R317-8-8.[7]8(6)(a)(7) shall include, but not be limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or R317-8-8. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial user and opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The Executive Secretary shall have authority to seek judicial relief for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the Executive Secretary finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable State or Federal law and not by this provision, and will comply with the confidentiality requirements set forth in R317-8-3.[2]3.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the Executive Secretary upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under subparagraph (1) above. This information shall be made available to the Executive Secretary upon request;

3. Notify industrial users identified under R317-8-8.[7]8(6)(b) of applicable pretreatment standards and any other applicable requirements. Within 30 days of approval of a list of significant

industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the requirements of R317-8-8.[10]11.

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Executive Secretary upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

a. Description of discharge practices, including non-routine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under R317-8-8.[4]5 with procedures for follow-up written notification within five days;

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response. The results of these activities shall be made available to the Executive Secretary upon request;

6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by R317-8-8.[10]11, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

7. Comply with all applicable public participation requirements of State law and rules. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at anytime during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-

month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC. TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH.

c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under R317-8-8.[7]§(6)(a)8 to halt or prevent such a discharge:

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; and

h. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

8. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the Executive Secretary when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

9. Local Limits. The POTW shall develop local limits as required in section R317-8-8.[4]§(4) or demonstrate that they are not necessary.

10. Enforcement Response Plan. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum;

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official(s) responsible for each type of response;

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in R317-8-8.7(6)(a) and (b).

11. List of Industrial Users. The POTW shall prepare a list of its industrial users meeting the criteria of R317-8-8.2(10)(a). The list shall identify the criteria in R317-8-8.2(10)(a)(1) applicable to each industrial user and, for industrial users meeting the criteria in R317-8-8.2(10)(a)(2), shall also indicate whether the POTW has made a determination pursuant to R317-8-8.2(10)(b) that such industrial user should not be considered a significant industrial user. This list and any subsequent modifications thereto, shall be

submitted to the Executive Secretary as a nonsubstantial program modification. Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Executive Secretary 90 days after submission of the list or modifications thereto, unless the Executive Secretary determines that a modification is in fact a substantial modification.

12. State Program in Lieu of POTW Program. Notwithstanding the provision of R317-8-8.[7]§(1), the State may assume responsibility for implementing the POTW pretreatment program requirements set forth in R317-8-8.[7]§(6) in lieu of requiring the POTW to develop a pretreatment program. However, this does not preclude POTW's from independently developing pretreatment programs.

8.[8] POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval

(1) Who Approves the Program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in R317-8-8.[8]§(2)(a),(b),(c) and (d). This description shall be submitted to the Executive Secretary, who will make a determination on the request for program approval in accordance with the procedure described in R317-8-8.[9]§10.

(2) Contents of POTW Program Submission.

(a) The program submission shall contain a statement from the city attorney or a city official acting in comparable capacity or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in R317-8-8.[7]§. This statement shall:

1. Identify the provision of the legal authority under R317-8-8.[7]§(6)(a) which provides the basis for each procedure under R317-8-8.[7]§(6)(b);

2. Identify the manner in which the POTW will implement the program requirements set forth in R317-8-8.[7]§ including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

(b) The program submission shall contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

(c) The program submission shall contain a brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth.

(d) The program submission shall contain a description of the funding levels and full and part time manpower available to implement the program.

(3) Conditional POTW Program Approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of R317-8-8.[8]§(2) of this subsection except that the

requirements of this section may be relaxed if the submission demonstrates that:

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Executive Secretary will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) Content of Removal Credit Submission. The request for authority to revise categorical pretreatment standards shall contain the information required in 40 CFR 403.7.

(5) Approval Authority Action. A POTW requesting POTW pretreatment program approval shall submit to the Executive Secretary three copies of the submission described in R317-8-8.819(2). Within 60 days after receiving a submission, the Executive Secretary shall make a preliminary determination of whether the submission meets the requirements of this section. Upon a preliminary determination that the submission meets the requirements of this section, the Executive Secretary will:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in R317-8-8.910.

(6) Notification Where Submission is Defective. If, after review of the submission as provided for in paragraph (5) above, the Executive Secretary determines that the submission does not comply with the requirements of R317-8-8.819(2), (3) and, if appropriate, (4), the Executive Secretary will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of R317-8-8.819(2), (3) and, if appropriate, (4).

(7) Consistency With Water Quality Management Plans.

(a) In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan, when the plan includes management agency designations and addresses pretreatment in a manner consistent with R317-8-8. In order to assure such consistency, the Executive Secretary will solicit the review and comment of the appropriate water quality planning agency during the public comment period provided for in R317-8-8.910(2)(a)(2) prior to approval or disapproval of the program.

(b) Where no plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the Executive Secretary will solicit the review and comment of the appropriate 208 planning agency.

8.910 Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits. The following procedure will be adopted in approving or denying requests for

approval of POTW pretreatment programs and applications for removal credit authorization.

(1) Deadline for Review of Submission. The Executive Secretary will have 90 days from the date of public notice of a submission complying with the requirements of R317-8-8.819(2), and where removal credit authorization is sought with the requirements of R317-8-8.617 and 8.819(4) to review the submission. The Executive Secretary shall review the submission to determine compliance with the requirements of R317-8-8.718(2) and (6), and where removal credit is sought, with R317-8-8.6. The Executive Secretary may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in R317-8-8.910(2) is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.910(2)(a). In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(2) Public Notice and Opportunity for Hearing. Upon receipt of a submission the Executive Secretary will commence his review. Within 20 days after making a determination that a submission meets the requirements of R317-8-8.819(2), and when a removal credit authorization is sought under R317-8-8.617 the Executive Secretary will:

(a) Issue a public notice of request for approval of the submission:

1. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include: mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

2. The public notice will provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission;

3. All written comments submitted during the 30-day comment period will be retained by the Executive Secretary and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the Executive Secretary.

(b) The Executive Secretary will also provide an opportunity for the applicant, any affected State, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in ~~R317-8-8.910(2)(a)(2)~~ R317-8-8.10(2)(a)2. of this subsection and will indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

2. The Executive Secretary will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt will be resolved in favor of holding the hearing.

3. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate will be published in the same newspaper as the notice of the original request. In addition, notice of the hearing will be sent to those persons requesting individual notice.

(3) Executive Secretary Decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in R317-8-8.~~[9]~~10(1) of this section, the Executive Secretary will approve or deny the submission based upon the evaluation in R317-8-8.~~[9]~~10(1) and taking into consideration comments submitted during the comment period and the record of the public hearing, the Executive Secretary will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the Executive Secretary may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA Objection to Executive Secretary's Decision. No POTW pretreatment program or authorization to grant removal allowances will be approved by the Executive Secretary if following the thirty (30)-day or extended evaluation period provided for in R317-8-8.~~[9]~~10(2)(a)(2) and any public hearing held pursuant to this section, the Regional Administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the Regional Administrator's objections will be provided to the applicant and to each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) Notice of Decision. The Executive Secretary will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the Executive Secretary will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The Executive Secretary will identify any authorization to modify categorical pretreatment standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) Public Access to Submission. The Executive Secretary will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

~~8.~~11 Reporting Requirements for POTWs and Industrial Users

(1) Definition. "Control Authority" means the POTW if the POTW's submission for its pretreatment program has been approved or the Executive Secretary if the submission has not been approved.

(2) Reporting Requirement for Industrial Users Upon Effective Date of Categorical Pretreatment Standards Baseline Report. Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination submission under R317-8-8.~~[5]~~6, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (a) through (g) of this Section. Where reports

containing this information have already been submitted to the Executive Secretary, the industrial user will not be required to submit this information again. At least 90 days prior to commencement of discharge, new sources and sources that become Industrial Users subsequent to promulgation of an applicable categorical standard, shall be required to submit to the Control Authority a report which contains the information listed in ~~[R317-8-10(2)(a)]~~R317-8-8.11(2)(a), (b), (c), (d) and ~~[R317-8-10(3)]~~R317-8-8.11(3). New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in R317-8-8.~~[10]~~11(2)(d) and (e).

(a) Identifying Information. The user shall submit the name and address of the facility, including the name of the operator and owners.

(b) Permits. The user shall submit a list of any environmental control permits held by or for the facility.

(c) Description of Operations. The user shall submit a brief description of the nature, average rate of production and Standard Industrial Classification of the operation carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream formula (see Section 40 CFR 403.6(e)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The user shall identify the pretreatment standards applicable to each regulated process.

2. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the Control Authority. Both daily maximum and average concentration or mass, where required shall be reported. The sample shall be representative of daily operations.

3. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control authority may waive flow-proportional composite sampling for any Industrial Users that demonstrate that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

4. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of R317-8-8.~~[10]~~11.

5. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to

allow use of the combined wastestream formula in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula this adjusted limit along with supporting data shall be submitted to the Control Authority.

6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the Administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

7. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

8. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance Schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under R317-8-8.[6]7, the combined wastestream formula under R317-8-8.[5]6, or by a fundamentally different factors variance under R317-8-8.[4]15 at the time the user submits the report required by R317-8-8.[4]11(2), the information required by R317-8-8.[4]11(2)(f) and (g) shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance under R317-8-8.[6]7, the combined wastestream formula under R317-8-8.[5]6, or by a fundamentally different factors variance under R317-8-8.[4]15 after the user submits the report required by R317-8-8.[4]11(2) of this subsection, any necessary amendments to the information requested by R317-8-8.[4]11(2)(f) and (g) shall be submitted by the user to the Control Authority within 60 days after the modified limit is approved.

(3) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by R317-8-8.[4]11(2)(g):

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards;

(b) No increment referred to in paragraph (a) of above shall exceed 9 months;

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority;

(4) Report on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the Control Authority a report containing the information described in R317-8-8.[4]11(2)(d, e. and f). For industrial users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in R317-8-8.[5]6 this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(5) Periodic Reports on Continued Compliance.

(a) Any industrial user subject to a categorical pretreatment standard after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the pretreatment standard or by the Executive Secretary, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in R317-8-8.[4]11(2)(d) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays and budget cycles, the Control Authority may agree to alter the months during which the above reports are to be submitted.

(b) When the Control Authority has imposed mass limitations on industrial users as provided by R317-8-8.[5]6, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the Control authority in accordance with the procedures in R317-8-8.[5]6 the report required by R317-8-8.[4]11(5)(a) shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by R317-8-8.[4]11(5)(a) shall include the user's actual average production rate for the reporting period.

(6) Notice of Potential Problems Including Slug Loading. All categorical and non-categorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in R317-8-8.[#]5.

(7) Monitoring and Analysis to Demonstrate Continued Compliance.

(a) The reports required in R317-8-8.[#]11(2), 8.10(4) and (5) shall contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the Control Authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if:

1. The Control Authority performs sampling at the industrial user at a frequency of at least once per month, or
2. The Control Authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable Pretreatment Standards and Requirements.

(d) All analyses shall be performed in accordance with procedures contained in 40 CFR 136 or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR 136 does not include sampling or analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the Administrator.

(e) If an industrial user subject to the reporting requirement in R317-8-8.[#]11(5) monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in, R317-8-8.[#]11(7)(d), the results of this monitoring shall be included in the report.

(8) Compliance Schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program.

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major

events leading to the development and implementation of a POTW pretreatment program.

(b) No increment referred to in paragraph (a) above shall exceed nine months.

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Executive Secretary including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Executive Secretary.

(9) Reporting requirements for industrial user not subject to categorical pretreatment standards. The Control Authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance with the techniques described in 40 CFR 136. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Executive Secretary determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(10) Annual POTW reports. POTWs with approved pretreatment programs shall provide the Executive Secretary with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements.

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(d) Any other relevant information requested by the Executive Secretary.

(11) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under R317-8-8.10.

(12) Signatory Requirements for Industrial User Reports. The reports required by R317-8-8.[+0]11(2), (4) and (5) shall include the certification statement as set forth in 40 CFR and 403.6(2)(B). and shall be signed as follows;

(a) By a responsible corporate officer if the industrial user submitting the reports is a corporation. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) above, if;

1. The authorization is made in writing by the individual described in paragraph (a) or (b) above.

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the Control Authority.

(d) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(13) Signatory Requirements for POTW Reports. Reports submitted to the Executive Secretary by the POTW in accordance with R317-8-8.[+0]11(8), (9) and (10) shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(14) Provisions Governing Fraud and False Statements. The reports and other documents required to be submitted or maintained by R317-8-8.[+0]11(2), (4), (5), (8), (9), (12) and (13) shall be subject to the Utah Water ~~Pollution Control~~Quality Act as amended and all other State and Federal laws pertaining to fraud and false statements.

(15) Record-Keeping Requirements.

(a) Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

2. The dates and times analyses were performed;

3. Who performed the analyses;

4. The analytical techniques or methods used; and

5. The results of the analyses.

(b) Any industrial user or POTW subject to these reporting requirements established shall be required to retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the Executive Secretary, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the Executive Secretary.

(c) A POTW to which reports are submitted by an industrial user pursuant to R317-8-8.[+0]11(2)(4), and (5) shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Executive Secretary. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the Executive Secretary.

(d) Notification to POTW by Industrial User.

1. The industrial user shall notify the Executive Secretary, the POTW, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under R315-2-1. Such notification must include the name of the hazardous waste as set forth in R315-2-1, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under R317-8-8.[+0]11(11). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.[+0]11(2), (4), and (5).

2. Dischargers are exempt from the requirements of R317-8-8.[+0]11(15)(d) during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in R315-2-1. Discharge of more than fifteen kilograms of non-acute hazardous wastes in a

calendar month, or of any quantity of acute hazardous wastes as specified in 40 R315-2-1, requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations adopted by EPA or the Utah Solid and Hazardous Waste Board identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of notification made under R317-8-8.~~[15]~~16(d)1, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

8.~~[11]~~12 Confidentiality of Information. Any information submitted to the Executive Secretary pursuant to these regulations may be claimed as confidential by the person making the submission. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the 40 CFR Part 2. Information and data provided to the Executive Secretary pursuant to this part which is effluent data shall be available to the public without restriction. All other information which is submitted to the State or POTW shall be available to the public at least to the standards of 40 CFR 2.302.

8.~~[12]~~13 Net/Gross Calculation. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with this section.

(1) Application. Any industrial user wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of R317-8-8.~~[12]~~13(2) and (3) are met.

(2) Criteria

a. The industrial user must demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake water.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS) and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.

d. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis.

8.~~[13]~~14 Upset Provision

(1) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of R317-8-8.~~[13]~~14(3) are met.

(3) Conditions Necessary for a Demonstration of Upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The industrial user has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the upset or if this information is provided orally, a written submission within five days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

4. Burden of Proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

5. Reviewability of Agency Consideration of Claims of Upset. In the usual exercise of prosecutorial discretion, State enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

6. User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the

primary source of power of the treatment facility is reduced, lost or fails.

8.[+4]15 Bypass Provision

(1) Definitions.

(a) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of R317-8-8.[+4]15(3) and (4).

(3) Notice.

(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Control Authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Prohibition of bypass.

(a) Bypass is prohibited and the Control Authority may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waters, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The industrial user submitted notices as required under R317-8-8.[+4]15(3).

(b) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in R317-8-8.[+4]15(4)(a).

8.[+5]16 Modification of POTW Pretreatment Programs

(1) General. Either the Executive Secretary or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a

significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section R317-8-8.[9]10.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in R317-8-8.[+5]16(3):

1. The POTW shall submit to the Executive Secretary a statement of the basis for the desired modification, a modified program description or such other documents the Executive Secretary determines to be necessary under the circumstances.

2. The Executive Secretary shall approve or disapprove the modification based on its regulatory requirements.

3. The modification shall be incorporated into the POTW's UPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with R317-8-5.6(3)(g).

4. The modification shall become effective upon approval by the Executive Secretary. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification.

(b) The POTW shall notify the Executive Secretary of any other (i.e. non-substantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in R317-8-8.[+5]16(2)(a)1. Such non-substantial program modifications shall be deemed to be approved by the Executive Secretary, unless the Executive Secretary determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Executive Secretary such modifications shall be incorporated in the POTW's permit in accordance with R317-8-5.6(2)(g). If the Executive Secretary determines that a modification reported by a POTW is in fact a substantial modification, the Executive Secretary shall notify the POTW and initiate the procedures in R317-8-8.[+5]16(2)(a).

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this section:

1. Changes to the POTW's legal authorities;

2. Changes to local limits, which result in less stringent local limits;

3. Changes to the POTW's control mechanism;

4. Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.);

5. A decrease in the frequency of self-monitoring or reporting required of industrial users;

6. A decrease in the frequency of industrial user inspections or sampling by the POTW;

7. Changes to the POTW's confidentiality procedures;

8. Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and

9. Changes in the POTW's sludge disposal and management practices.

(b) The Executive Secretary may designate other specific modifications in addition, to those listed in R317-8-8.[+5]16(3)(a), as substantial modifications.

(c) A modification that is not included in R317-8-8.[15]16(3)(a) is nonetheless a substantial modification for purposes of this section if the modification:

- 1. Would have a significant impact on the operation of the POTW's Pretreatment Program;
- 2. Would result in an increase in pollutant loadings at the POTW; or
- 3. Would result in less stringent requirements being imposed on industrial users of the POTW.

8.[16]15 Variances From Categorical Pretreatment Standards for Fundamentally Different Factors (FDF). A variance may be granted, using the procedures of 40 CFR 403.13, to an industrial user if data specific to the user indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue.

KEY: water pollution, discharge permits
[August 4, 1995]2000
Notice of Continuation December 12, 1997

19-5
19-5-104
40 CFR 503



Human Services, Aging and Adult Services **R510-104** Nutrition Programs for the Elderly

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE No.: 23158
FILED: 09/14/2000, 16:41
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To abide by statutory provisions under which the rule was enacted, including meeting Federal National Aging Program Information System (NAPIS) requirements, Dietary Reference Intakes (DRIs), clarification of previous rules, and making sure this is policy, and not procedure.

SUMMARY OF THE RULE OR CHANGE: The AAA (Area Agencies on Aging) Network provided input after reviewing the proposed changes to Subsections R510-104-4(2)(g) and R510-104-4(3)(d), and R510-104-4(5)(a). References to the Recommended Daily Allowances (RDAs) and Dietary Reference Intakes (DRIs) (the new dietary reference intakes) were deleted because it is too repetitious. Service providers should refer to the National Aging Program Information System (NAPIS) "Missing Data" section to account for the people who do not provide data. Subsection R510-104-2(4)(b) appeal process was added as suggested by AAAs. Costs of meals should reflect the 131 reports. Needed clarification to assure confidential contributions for audits assuring that persons under the age of 60 years are paying the full price of the meals. Subsection R510-104-4(5)(b)(i)(iii)

needed to specify the person responsible to noting changes in the menu. Made sure it is a policy, not a procedure. Cash out to seniors in lieu of food stamps needed to be added. Updated fiscal practices in accordance with the Older Americans Act Law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-3-104
FEDERAL REQUIREMENT FOR THIS RULE: USC 3001 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: The program has been slowly implementing these changes since 1992. There are no new costs to this program, as the changes in the rule merely formalize agency practices that are already covered by agency budget.
 - ❖LOCAL GOVERNMENTS: There are no new costs to this program, as the changes in the rule merely formalize agency practices.
 - ❖OTHER PERSONS: There are no new costs to this program, as the changes in the rule merely formalize agency practices.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated with this rule, as the changes in the rule merely formalize agency practices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No anticipated costs have been identified in relation to this rule change.

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

Human Services
Aging and Adult Services
Room 325
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sally Anne Brown at the above address, by phone at (801) 538-8250, by FAX at (801) 538-4395, or by Internet E-mail at sbrown@hs.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Helen Goddard, Director

R510. Human Services, Aging and Adult Services.
R510-104. Nutrition Programs for the Elderly (NPE).
R510-104-1. Nutrition Program Standards, Policy and Procedures.

(1) Program Standards: The Division shall comply with the Dietary Guidelines for Americans released 30 May 2000 (a copy is located in the Division), published by the U. S. Department of

Health and Human Services and the U. S. Department of Agriculture, and provide to each participating older individual:

(a) A minimum of 33 1/3 percent of the daily [~~recommended dietary allowances~~ Recommended Dietary Allowances (RDA) and Dietary Reference Intake (DRI)] as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, Institute of Medicine and Mathematica Policy Research, Incorporated, if the project provides 1 meal per day;

(b) A minimum of 66 2/3 percent of the allowances if the project provides two meals per day; and

(c) One hundred percent of the allowances if the project provides three meals per day.

(2) Nutrition Services: The Division shall develop a comprehensive and coordinated nutrition service system statewide. The Division shall encourage and assist the AAAs in utilization of resources to develop greater capacity in their nutrition programs and services. The Division will approve a nutrition screening tool that will be used to identify nutritional risk or malnutrition. All seniors participating in the Nutrition Programs For The Elderly, Congregate and Home Delivered Meals, will be required to complete the nutrition screen. If an individual does not want to fill out the screening form, he or she will not be denied a meal. The provider is required to assure the data to National Aging Program Information System (NAPIS). The Division will monitor, coordinate, and assist in the planning of nutritional services, with the advice of a registered dietitian or an individual with comparable expertise. The nutrition service system shall provide older Utahns, particularly those in the greatest economic and social need categories, with particular attention to low-income and low-income minorities, access and outreach to nutrition services, nutrition education and nutritionally sound meals, to promote better health through improved diet.

(3) Coordination: [~~The following Nutrition Program Standards:~~] Policy and Procedures approved by the Utah State Board of Aging and Adult Services - shall be used by the Division and its contractors/grantees in the conduct of all functions and responsibilities required in carrying out services and funding categories of the Title III Part C Nutrition Program, including Congregate Meals (Part C-1), Home-Delivered Meals (Part C-2), Nutrition Education and Nutrition Outreach, and the Cash-in-Lieu and Commodities Program. The USDA Program authorizes cash payments to the State from the United States Department of Agriculture, based upon the number of eligible Title III Congregate and Home-Delivered Meals served. Part of or all of the revenue earned may be received in the form of commodities; as determined by the Division and in consultation with the AAAs.

R510-104-2. Eligibility for Nutrition and Nutrition Support Services.

(1) All persons aged 60 and older and the spouse of any individual regardless of his/her age, are eligible for OAA nutrition services. If sufficient resources are not available to serve all eligible individuals who request a service, the AAA shall ensure that preference is given to those of greatest social or economic need, with particular attention to low-income, and low-income minorities. All individuals requesting home-delivered meals shall be assessed and only those individuals who have been determined to be

homebound as defined in R510-104-2.4 shall be eligible for a home-delivered meal.

(2) Other Individuals who may receive congregate and home-delivered meals [~~and non-mandated support services~~] include:

(a) Any individual with a disability (who has not attained the age of 60), if they reside in a housing facility primarily occupied by elderly persons that has a congregate meal site funded by the OAA on the premises.

(b) [~~Any individual with a disability between the ages of 18-59 who is a client of Home and Community-Based Services (HCBS) and/or the Medicaid waiver service, shall be given preference to receive nutrition over other fee paying participants services if the HCBS client's case manager includes the meal in the care plan; the participant shall pay the actual cost of the meal as determined by the AAA.~~ Clients of Home and Community-Based Alternatives programs and/or clients of the Medicaid Home and Community-Based programs for the elderly shall be allowed to participate in the nutrition program as capacity allows, if the client's case manager includes the meal in the care plan. The participant's program shall pay the actual cost of the meal as determined by the AAA. The above-named clients shall be given preference over other fee-paying individuals.

(c) Individuals with disabilities who reside at home with and accompany older individuals who are eligible under the Act.

[~~(3) When an AAA offers services to any individual in Section B1 or B3, they shall establish procedures that will allow nutrition project administrators the option to offer a meal, on the same basis as meals that are provided to elderly participants.~~

~~(4)~~ (3) Homebound Status:

(a) A person shall be determined to be homebound if he/she is unable to leave home without assistance because of a disabling physical, emotional, or environmental condition.

(b) Homebound status shall be documented at the project level. Method of assessment shall be approved by the Division to ensure standard measurable criteria. Homebound status shall be reviewed or re-evaluated on a regular basis, but not less frequently than annually. [~~The AAA shall require w~~ Written authorization for eligibility shall be provided by the AAA. A written copy of the appeal process shall be made available to those denied this service. ~~In the case of an HCBS Medicaid Waiver clients, and Alternatives Program clients, the evaluation shall be conducted by the case manager.~~] Two authorized signatures of approval for eligibility shall be required by the AAA.

(c) Urgent need: Top priority may be given to emergency requests. Home-delivered meals for an emergency shall start as soon as possible after the determination of urgent need has been made. A regular assessment will be made within 14 calendar days from the date of request to determine continued eligibility.]

~~(d) Each AAA shall develop eligibility criteria to be used by the nutrition service provider to determine if home-delivered meals should be provided to the spouse of a homebound individual. The overriding consideration given in the Agency's criteria shall be that the receipt of a meal by the spouse must be in the best interest of the homebound older person. The eligibility criteria must be included in the AAA policy and procedures manual for nutrition service providers. The nutrition service provider shall make the determination of spouse eligibility for home-delivered meals at the same time as it makes the assessment of homebound status.]~~

R510-104-3. Contribution Policy.

(1) The actual cost, as defined by the AAA and reported to the State, of a congregate meal shall be posted at the nutrition site. Suggested contribution and actual cost shall be posted in a prominent conspicuous location.

(2) Each eligible participant shall have an opportunity to voluntarily and anonymously contribute toward the cost of a provided meal service.

(3) Each AAA shall establish and implement procedures which will protect the privacy of the client's decision to contribute or not contribute toward the meal service rendered.

(4) Under no circumstances may an eligible client be denied service(s) by a provider who received funds from the AAA (for that service) because of the client's decision not to contribute for services rendered.

(5) AAAs shall have each provider post suggested contributions and fees (actual costs of meal) for nutrition services in a prominent conspicuous location.

(6) There shall be locked contribution boxes, placed away from the ticket and change table, which shall not be monitored for contributions, in order to assure the confidentiality of the donation.

(7) Participant contributions shall be counted by two persons, and both individuals shall sign a form attesting to the correct count. A copy of such signed documentation shall be kept on file.

R510-104-4. Nutrition Services.

(1) Selection of Providers:

(a) The AAA shall make awards for congregate and home-delivered nutrition services to providers that furnish either or both types of service. Each AAA shall assure that each service provider selected meets all applicable Federal, State and Local regulations.

(b) Each AAA, when feasible, shall give preference in making awards for home-delivered meal services to providers that meet the following :

(i) Organizations that have demonstrated an ability to provide home-delivered meals efficiently and reasonably; and

(ii) Providers will furnish assurances to the AAA that it will maintain efforts to solicit voluntary support and that OAA funds made available will not be used to supplant funds from non-federal sources.

(2) Requirements for Congregate Meal Providers:

(a) Each AAA, in consultation with the nutrition provider and AAA Advisory Council, or local equivalent, shall determine the number of congregate sites to be established and their days of operation.

(b) ~~[Nutrition projects]~~ Local AAA's must provide congregate meals a minimum of five ~~or more~~ days per week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary of Aging by regulation), and a lesser frequency shall be approved by the Division).

(c) Where feasible, congregate nutrition sites shall be in as close proximity to the majority of eligible individuals' residences as feasible, with particular attention upon a multipurpose senior center, a school, a church, or to other appropriate community facility, preferably within walking distance where possible, and where appropriate, transportation to such site is furnished.

(d) Congregate meal projects will provide at least one hot or other appropriate meal per day and any additional meals which the

nutrition contract provider may elect to provide, with the approval of the AAA.

(e) A provision for Special Meals will be provided where feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals.

(f) The congregate meals shall comply with the Dietary Guidelines for Americans as stated in R510-104-1(A).[

~~(g) Each meal served by the congregate nutrition provider shall provide 33 1/3% of the current recommended dietary allowances (RDA) as established by the Food and Nutrition Board of the National Academy of Science - National Research Council.]~~

~~(g)~~ (g) Each congregate meal project shall comply with applicable State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in the storage, preparation, service, and delivery of meals to older individuals.

~~(h)~~ (h) Each nutrition provider shall establish outreach activities which assure that the maximum number of eligible clients are aware that they have the opportunity to participate.

~~(i)~~ (i) Each congregate project shall provide nutrition education on at least a semi-annual basis.

(3) Requirements for Home-Delivered Meal Providers:

(a) Home-delivered meals service within a Planning and Service Area (PSA) shall be available 5 or more days per week.

(b) Home-delivered meals that are provided 4 days/week or less in rural areas must be approved by the Division.

(c) Home-delivered meals shall comply with the Dietary Guidelines for Americans as stated in R510-104-1(A).[

~~(d) Each home-delivered meal served shall provide 33 1/3% of the current recommended dietary allowances (RDA) as established by the Food and Nutrition Board of the National Academy of Science, National Research Council.]~~

~~(d)~~ (d) Home-delivered meal/s should consist of solid foods, served hot, cold, frozen, dried, canned, or supplemental foods (with a satisfactory storage shelf life) ~~and any additional meals which the AAAs may elect to provide~~. In situations where nutritional considerations make solid foods inappropriate, the need for nutrient supplements to include liquid supplemental feedings, (meeting the required RDA Guidelines) may be part of medical nutrition therapy recommended by a registered dietitian, registered nurse or physician, with the concurrence of the local AAA, primarily when the participant can not tolerate or digest regular meals. Exceptions to solid foods shall be documented by the nutrition case manager who shall record that other alternatives were tried but unsuccessful. All other sources of home-delivered meal modification should be exhausted before liquid supplemental feedings become the main nutritional regimen.

~~(e)~~ (e) Each home-delivered meal project shall comply with applicable State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in the storage, preparation, service, and delivery of meals to older individuals.

~~(f)~~ (f) Each AAA shall provide a mechanism that will assure the review of need for home-delivered meals for absent participants at the Congregate Sites.

~~(g)~~ (g) Arrangements for the availability of meals to participants during weather-related emergencies shall be made when feasible and appropriate by the service provider. When appropriate, nutrition service providers shall refer clients to additional health and social services.

(h) Each home-delivered project shall provide nutrition education to participants on a least a semi-annual basis.

(4) Food Service Management: All AAAs shall ensure the following:

(a) Meal Preparation Site: When a project is designed to serve meals at more than one congregate meal site, efforts shall be made to have all meals prepared at one facility and in turn delivered to the various sites, (if more cost effective).

(b) Sanitation: All State and local sanitation and safety regulations applicable to food preparation, delivery and the serving of meals shall be followed.

(c) Quality and Quantity: Tested quality recipes adjusted to yield the number of servings needed must be used to achieve constant and desirable quality and quantity of meals.

(d) Food Preparation: All foods shall be prepared and served in a manner acceptable in flavor and appearance, while retaining nutrients and food value, and critiqued by the local advisory council which considers issues pertaining to the nutrition program.

(e) Inventories: Each AAA shall require that accurate inventory records for consumable goods, including USDA commodities and supplies be maintained for nutrition projects funded in whole or in part by the Older Americans Act funds. Either the periodic or perpetual system of inventory shall be acceptable, if conducted consistent with generally accepted inventory control principles.

(f) Training: The provider shall plan and provide training and supervision in sanitation, food preparation, and portion control by qualified personnel for all paid and volunteer staff who prepare, handle and serve food.

(g) Refrigerated Storage:

(i) The refrigeration cooling period for hot food shall not exceed 4 hours.

(ii) All prepared foods that are frozen in a nutrition project kitchen shall be chilled in a rapid chill system which reduces the temperature of foods to 70 degrees within 2 hours and shall be cooled to an internal product temperature of ~~45~~41 degrees F or below within the following 2 hours.

(h) Frozen Food Requirements: All packaged frozen meals and freezing methods used to freeze meals utilized by the nutrition project, must meet the requirements of the State of Utah ~~Local~~ Health Department regulations.

(i) Leftover Food:

(i) All food transported to sites which becomes "leftover," except unopened prepackaged food, must be properly disposed of at the meal site or the main food preparation site in compliance with local Health Department regulations.

(ii) AAAs shall develop policies and procedures to minimize leftover meals to 1.5 percent or less.

(iii) Leftovers ~~(which should be minimal)~~ shall be offered to all participants as second helpings at those congregate settings which do not have on site cooking facilities or methods to preserve leftover food to meet the nutritional standards for later consumption (approved by the local Health Departments).

(iv) The AAA shall cause to have placed at each nutrition site, in a location that is easily visible to patrons, a disclaimer which shall state: "For Your Safety: Food removed from the center must be kept hot or refrigerated promptly. We cannot be responsible for illness or problems caused by improperly handled food." No food shall be taken from the site by staff.

(j) Food Protection: Food on display shall be protected from consumer contamination by the use of packaging or by the use of an easily cleanable counter, serving line, or salad bar protector devices, display cases, or by other effective means. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.

(k) Hot and Cold Food:

(i) Beef products including hamburger shall be cooked to an internal temperature of 155 degrees F, poultry shall be cooked to an internal temperature of 165 degrees F and pork shall be cooked to an internal temperature of 165 degree F.

(ii) All hot foods shall be maintained at 140 degrees F or above, from the time of final food preparation to completion of service. All refrigerated food shall reach an internal temperature of ~~45~~41 degrees F within 4 hours.

(iii) Cold foods shall be maintained at ~~45~~41 degrees F or below from time of initial service to completion of service.

(iv) The nutrition project shall make temperature checks of all prepared, received and transported meals.

(l) Food Safety:

(i) All food used by the nutrition service provider(s) must meet standards of quality, sanitation, and safety applying to foods that are processed commercially and purchased by the project.

(ii) No food prepared or canned in a home or any other non-licensed facility may be used in meals provided by a project financed through the nutrition service provider(s) award.

(iii) Food service certification in applied food service sanitation by nationally recognized industry programs and approved by the Utah State Department of Health ~~like those sponsored by the Nutritional Institute for Food Service Industry (NIFI), or Educational Testing Service (ETS)~~, shall be required for one person per shift where food is prepared and cooked for NPE meals. ~~[should be encouraged by the AAA.]~~

(m) Staffing: The nutrition service provider shall:

(i) Give preference to employing those qualified persons age sixty (60) and over, including those of greatest economic or social need;

(ii) Designate a person responsible for the conduct of the project who has the necessary authority to conduct day-to-day management functions of the provider;

(iii) Utilize a registered dietitian or nutritionist to provide necessary nutrition services.

(n) Staff and Volunteer Meals:

(i) Staff and guest(s), under the age of 60 years, must pay the actual cost, as established by the AAA, of the meal. Payments from those under 60 years of age should be collected and accounted for separately.

(ii) If serving a meal to staff under age 60 deprives elderly target population individuals from securing a meal, other arrangements shall be made for staff.

(iii) Each AAA shall establish procedures when they allow nutrition project administrators the option to offer a meal to individuals providing volunteer service during the meal hour, on the same basis as meals that are provided to elderly participants.

(5) Nutritional Requirements:

(a) Food Requirements: AAAs shall ensure that the meals provided through their nutrition projects comply with the Dietary Guidelines for Americans to each participating older individual: to include R510-104-1(a)(b)(c), [a minimum of 33 1/3 percent of the

daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, if the project provides 1 meal per day; a minimum of 66 2/3 percent of the allowances if the project provides 2 meals per day; and 100 percent of the allowances if the project provides 3 meals per day.] Compliance shall be documented for each meal served by the nutrition provider. The following methods are acceptable:

~~[(i) Nutrient standard method:~~

~~— [(iv)](i) Handbook 8 of USDA (located in the University of Utah Marriott Library Federal Documents Collection) [~~(located in the Division)~~]~~

~~[(iii) Mini nutri-guide system, if used in conjunction with quality standardized recipes:~~

~~— [(iv)](ii) Computer analysis based upon an acceptable software program approved by the Division [~~Office~~].~~

~~[(iv)](iii) Computation of food values for portions of foods commonly used; such menus and analysis of menus shall be the responsibility of a qualified dietitian [~~-~~] nutritionist.~~

(b) Menu Cycles and Analysis:

(i) Nutrition providers shall send an approved copy of the menu cycles to be used to the appropriate nutrition site(s) and to the AAA. Any substitutions (deviations) from the nutrient approved menu(s) shall be documented and reported by the nutrition project director.

(ii) Service providers contracting with a third party shall stipulate in the contract that menu cycles must be received by the service provider at least one week prior to use for analysis and approval.

(iii) Any substitutions to the original menu cycle must be analyzed for minimum requirements, documented in the menu (by the cook in charge in the nutrition project who initials the changes) and kept on file. For audit purposes, menu cycles and nutrient analysis shall be maintained ~~[on file]~~ for a minimum of 3 years, or until disposition is authorized by the grantor agency. The project director shall be responsible for selecting or designating an individual to be trained in the proper procedures for menu analysis and menu substitutions.

(c) Modified Diets:

(i) Modified diets shall be available to program participants. Each project will provide special menus, where feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. The AAA shall be responsible for the method of obtaining orders for modified diets from each participant's physician, maintaining such orders on file and reviewing them. In addition, registered/certified dietitians shall identify which modified diets are available to participants.

(ii) The Division shall recommend a diet manual for modified diets. Any other manuals used shall be approved by the Division prior to their use. Modified diet menus shall be planned and prepared under the supervision of a dietitian/nutritionist to assure that they comply with the Dietary Guidelines for Americans and provide 33 1/3 % of the ~~[recommended dietary allowances]~~ RDA or DRI as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, Institute of Medicine.

(d) Vitamins: Vitamins and/or mineral supplements shall not be made available by service providers.

(e) Utensils for the Blind and Disabled: Upon request, the AAA may provide the appropriate food containers and utensils for the blind and the disabled.

R510-104-5. Use of Nutrition Dollars to Fund Support Services Directly Related to Nutrition Services.

Project income generated by Title III-C ~~[may]~~ can only be used to:

(1) expand the number of meals provided or to facilitate access to such meals (transportation and outreach);

(2) integrate systematic nutrition screening for nutrition/malnutrition and food insecurity; or

(3) to provide other supportive services directly related to nutrition services, such as outreach, information and referral, transportation, access to grocery shopping, help with food stamp procurement, social activities in conjunction with a meal, and nutrition education.

R510-104-6. Restriction on Use of Funds.

(1) Program income generated by OAA Title III Part C-1 and Part C-2 may be used ~~[only]~~ as the addition alternative (to expand the number of meals provided, or to facilitate access to such meals or to provide other supportive services directly related to expanding nutrition services) or the cost sharing alternatives as stated in 45 CFR 92.259(g)(2) (to match federal and/or state funds) or a combination of the two alternatives.

(2) To defray program costs, nutrition providers may also perform Nutrition Services for other groups and programs outside the parameters of the Nutrition Program for the Elderly under the OAA, providing such services will not interfere with the project or programs for which the contract was originally granted. These extra nutrition activities shall be held in a manner that does not impede the preparation or delivery of nutrition services to the elderly, and shall charge, to the recipients, the full cost of preparation and delivery of the nutrition services as set forth by the provider. When persons 60 years of age and older participate in these "special events," they assume the identity of the activity and are obligated to pay the requested fee for participation. This shall not be confused with the donation policy of the Title III Nutrition Programs. However, income earned - meaning gross program income directly generated by a contract supported program - shall be used to increase the number of meals served by the nutrition project involved.

R510-104-7. USDA Program Participation (Commodities and Cash-In-Lieu of Commodities).

(1) Donated Food Standard Agreement: The AAA or nutrition service provider shall enter into a written agreement with the Department of Human Services Federal Food Program of the State of Utah and shall follow all procedures of the "Agreement for Commodities Donated by the U.S. Department of Agriculture."

(2) USDA cash-in-lieu of commodities payments or revenue earned, depending on whether the accounting for the USDA program is on a cash or accrual basis, shall be used to offset the cost of raw food and the cost of purchased meals.

(3) USDA Commodity Storage Billing: In accordance with Section 250.6(10)(j) of the Code of Federal Regulations, Title 7, Chapter 2, FNS, the Distributing Agency reserves the right to bill the actual costs incurred in the storage and/or in-state transportation

of commodities ordered by and for those Nutrition Programs for the Elderly sites which operate under the auspices of the Division.

(4) Division Responsibilities:

(a) The Division, with the assistance of the nutrition projects, may annually conduct a cost analysis comparing costs of commodities to the cost of the same food purchased locally or the cost of utilizing the State award for foods. Based on this study, commodities which are cost efficient, may be recommended to be ordered by the Division from Federal Food for each AAA requesting commodities.].

~~—(b) The Division shall assign to each AAA a fixed commodity allocation by the last working day in August of the preceding fiscal year. The fixed allocation assigned to each AAA is the estimated value of the commodities ordered.~~

~~—(c) The Division will adjust the fixed commodity allotment if there is a material difference between the fixed commodity allotment and the value of the commodities actually received at the end of the fiscal year. A one-time adjustment will be made to distribute the differences. Should the State as a whole receive less than its fixed commodity allotment, this shortage will be proportionately distributed to the AAAs utilizing the ratio of each AAA's commodity allotment to the State's total fixed commodity allotment.]~~

(5) Nutrition Service Provider Responsibilities:

(a) Nutrition providers shall accept and use all commodities, including bonus commodities, made available by the Division and funded by the USDA.

(b) Nutrition projects shall store commodities as prescribed in the "Agreement for Commodities Donated by the U.S. Department of Agriculture."

(c) AAAs shall report all irregularities in the commodity shipping invoices to Federal Food, State of Utah. The nutrition project shall accept only the quantity and type of food stated on the invoice. If the quantity is less than shown on the invoice, the nutrition project shall note this on the invoice, and request the deliverer to initial, and report it to the AAA.

(6) Cash-In-Lieu of Commodities:

(a) AAAs shall promptly disburse all USDA cash-in-lieu of commodities to nutrition providers in their planning and service area that are funded with Title III Part C-1 and Part C-2 funds.

(b) AAAs shall ensure that payments received by providers in lieu of commodities shall be used solely for the purchase of:

(i) United States agricultural commodities and other foods produced in the United States; or

(ii) Meals furnished to them under contractual arrangements with food service management companies, caterers, restaurants, or institutions, have provided that each such meal contains United States produced commodities or foods at least equal in value to the per meal cash payment which the nutrition service providers have received.

(7) Monitoring, Withholding or Recovering Cash Payments:

(a) The Division and the AAAs shall monitor and assess use of payments received in lieu of commodities. Such monitoring shall include periodic on site examination of all pertinent records maintained by service providers, as well as, all such records maintained by suppliers of meals purchased under contractual arrangements.

(b) The Division will withhold or recover cash payments in lieu of commodities from an AAA if it determines, through a review

of such AAA's reports, program monitoring, financial review or audit, that the AAA has failed to comply with the provisions of this section, or otherwise have failed to adequately document the basis for payments received during the fiscal year.

(c) AAAs which do not expend the Cash-In-Lieu within a maximum of two quarters after it has been allocated by the Division shall be evaluated for need and other available resources at the local AAA. Their rate of entitlement may be reduced in succeeding allocation periods.

(8) USDA Documentation:

(a) AAAs shall ensure that the cost of U.S. grown food purchased during the project year is at least equal to the amount of the USDA reimbursement under the cash in lieu of commodities program. This documentation shall be based on paid invoices.

(b) In the case of meals served under contractual arrangements with food service management companies, caterers, restaurants or institutions, copies of menus and invoices of food purchases that demonstrate that each meal served contained United States produced commodities or food at least equal in value to the per meal cash payments, constitutes adequate documentation.

(9) Food Stamps: AAAs shall require all service provider(s) to ensure that information is provided to all participants regarding food coupons or cash-out and how to apply for such assistance.

R510-104-8. Additional Meal Policy.

(1) Nutrition providers may serve a second meal or third meal if planned as an objective in the Area Plan. When two meals are served[~~]~~ per day, they shall provide 66 2/3% of the RDA and DRI. When three meals are served[~~]~~ per day, they shall provide 100% of the RDA and DRI. Provision of more than one meal qualifies for USDA reimbursement if each meal meets the 33 1/3% RDA and DRI. Second helpings of the same meal do not qualify for USDA reimbursement. All meals shall comply with the Dietary Guidelines for Americans.

(2) A home-delivered meal, intended for a meal client and that can not be delivered, may be given to another home-delivered meal client as a second meal.

(3) To qualify second meals in the local meal count reports for USDA reimbursement, AAAs on Aging will be allowed to serve up to 1.5% of the total meals per quarter in second meals without formally developing a local second meal policy. If second meals claimed in the local meal count reports are equal to or greater than 1.5% of total first meals per quarter, a second meal policy will need to be developed by each local AAA for USDA reimbursement.

(4) Administration and Program Management: Nutrition services providers may serve a second meal to Senior Citizens who have been identified through nutrition screening to be at nutritional risk and/or socially or economically in need. The AAA shall have written program objectives which are specific, verifiable, and achievable for nutrition service provider(s), including the number and frequency of meals to be served at each designated congregate site or center, and to individual recipients in the home delivered meal program.

(a) Nutrition projects who provide a second meal will identify how many participants are in need of the extra meal, and include this number in their daily meal order.

(b) Second meals will be packaged so that the food will be kept at proper storage temperatures until the meal is taken home by the participant.

(c) A cold "sack lunch" that meets 33 1/3% of the dietary requirements may be offered as the second meal to the eligible participants.

(d) The participants who receive a second meal will be given the opportunity to make a second confidential contribution for that meal.

(e) Records will be maintained by the nutrition provider(s) on all additional meals served to eligible participants.

(f) Nutrition projects take appropriate action to minimize food left over at each site.

(g) Leftover foods occurring at on site cooking facilities shall be properly refrigerated and incorporated into subsequent meals whenever possible.

(5) Nutrition counseling and educational services for individuals and their primary caretakers may be provided by (or under the direction of) a dietitian or an individual with comparable expertise.

(6) There shall be written procedures to be followed by the service providers in the event of weather related emergencies, disasters, or situations which may interrupt meal service or the transportation of participants to the nutrition site.

R510-104-9. Transfer of Funds.

~~[State-wide]~~Statewide transfers between OAA Title III B and C awards shall not exceed ~~[25%]~~20% ~~[-and shall not exceed 20% after FFY 96].~~ Transfers between Part C-1 and Part C-2 awards shall not exceed 30% [thirty percent] of any one funding category unless the Division requests and receives written approval from the U.S. Department of Health and Human Services Assistant Secretary for Aging. ~~[-If AAA's demonstrate to the satisfaction of the Division Director that a thirty percent (30%) transfer between Title III-C-1 and III-C-2 is insufficient, then they may request a waiver through the U. S. Department of Health and Human Services Assistant Secretary for Aging, permitting the AAA's to transfer an additional fifteen percent (15%) of funds received for fiscal years 1994 and 1995; and an additional ten percent (10%) of funds received for fiscal year 1996.]~~

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KEY: elderly, nutrition, home-delivered meals*, congregate meals*

[March 19, 1996]2000

62A-3-104

42 USC Section 3001



Human Services, Recovery Services

R527-550

Assessment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23148

FILED: 09/14/2000, 09:22

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to include information regarding the use of judicial support orders when assessing child support to a parent when a child is placed in foster care or youth corrections and to add the criteria used to determine if a new Administrative Order should be issued. The rule will also clarify that child support is due on the first day of the month and is not pro-rated for partial months.

SUMMARY OF THE RULE OR CHANGE: This amendment updates the assessment procedures used when a judicial support order exists and adds the criteria for an Administrative Order. It also clarifies that child support is due on the first day of the month.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-1-117, 62A-7-124, 62A-11-104, 62A-11-107, 62A-11-110, 62A-11-111, 62A-11-201, 62A-11-301, 78-3a-906, 78-45-1, 78-45-4.3, and 78-45-7

FEDERAL REQUIREMENT FOR THIS RULE: 45 CFR 300-307

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** We are changing the cost of care limitation on collections because general child support law implies that the guideline amount is the correct amount of child support that the custodian agency or parent should receive. As in the situation of a custodial parent, a custodial agency's support payments are not contingent on the documentation of expenditures for the child. The Division of Child and Family Services can still determine if a reimbursement to another agency or parent would ever be appropriate. This change will have little fiscal impact because collections rarely exceed the total accumulated basic cost of care and may never exceed basic cost plus administrative costs.

We are also clarifying the conditions for reviewing existing child support orders to determine when a new order needs to be established. There will be little fiscal impact because the amount could increase or decrease. In fact, we have been doing these reviews for several years now based closely on child support modification statutes, but we have never clarified it in rule.

Charging a full payment on the first day of each month does not increase or decrease collections. The state might collect a full month's payment for a partial month of care in the last month, however, the parent would not pay for the first month if there child was taken in custody after the first day of the month.

❖**LOCAL GOVERNMENTS:** This rule does not impose a cost or savings impact on any local government entity, since the Division is budgeted solely from State government.

❖**OTHER PERSONS:** The changes to the cost of care limitation will have very little affect on our parents because collections rarely exceed the total accumulated base cost of care. In the event that the Division of Child and Family Services determines that a reimbursement to another agency or parent is appropriate, a refund may be issued at that time.

The clarification of the conditions for reviewing existing child support orders to determine when a new order needs to be established will not affect our parents because the Office of

Recovery Services (ORS) has been doing these reviews for several years and is now being clarified in the rule. The clarification that child support is due on the first day of each month will not affect our parents because the number of chargeable months will generally stay the same. The state might collect a full month's payment for a partial month of care in the last month, however, the parent would not pay for the first month, if the child was taken into custody after the first day of the month.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no additional administrative costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule R527-550 specifies the formula and criteria for determining the child support obligation for children residing in Human Services 24-hour care programs. It established the same assessment guidelines and criteria for all Human Services 24-hour care programs. However, the rule itself, as well as the proposed changes, does not pose any fiscal impact on businesses.

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

Human Services
Recovery Services
Fourteenth Floor, Eaton/Kenway Bldg.
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145-0011, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brenda Zimmerman at the above address, by phone at (801) 536-8777, by FAX at (801) 536-8509, or by Internet E-mail at bzimmern@hs.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
R527-550. Assessment.
R527-550-1. [Foster Care]Children Placed in the Custody of the State.

1. ORS shall collect child support and ~~[entitlement benefits]~~Third Party Payments in behalf of children placed in ~~[foster care]~~the custody of the state in accordance with Section 78-3a-906, 78-45-1 et seq., ~~62A-1-117,~~ 62A-11-301 et seq., and Federal regulations 45 CFR 300 through 307.

2. The monthly child support obligation will be ~~[assessed]~~determined in accordance with~~[according to]~~ the child support guidelines enacted in Section 78-45-7.2 through 78-45-

7.18, UCA. ~~[Collections plus third party payments during the month which exceed the monthly court ordered amount will be used to reimburse the state for past payments made in behalf of the child by the Division of Family Services or IV-A agency.]If a current child support order exists, ORS will collect and enforce the support based on the existing order unless it has been three years since the issuance of the order. If it has been three years since the issuance of the order, ORS will conduct a review of the order and the parent's current financial circumstances to determine if the order is in compliance with the child support guidelines. If the order is not in compliance with the child support guidelines, a temporary administrative order may be issued, under the administrative adjudication process as provided in rule R497-100-1 et seq., while the child is under the jurisdiction of the juvenile court and in state custody.~~

3.a. If an administrative order for support is issued at the time the child is placed in custody; and,

b. the child returns home, (but remains under the juvenile court's jurisdiction); and,

c. the child is subsequently returned to state custody, ORS will collect and enforce child support based on the existing administrative order.

~~[3]4. Third party payments are defined as entitlement benefits (SSA, SSI), insurance benefits, trust funds benefits, [and so forth]paid in behalf of the child.~~

~~[4]5. [If funds are collected in excess of the total accumulated cost of care, ORS shall distribute the excess to the division for deposit in the child's trust or to the custodial parent if the child has returned home.]Child support is due and payable on the first day of the month. Child support shall not be pro-rated for partial months.~~

~~[R527-550-2. Youth Corrections:~~

~~1. ORS shall collect child support and entitlement benefits in behalf of children placed in the custody of the Division of Youth Corrections (DYC) in accordance with Section 78-3a-906, 78-45-1 et seq., 62A-11-301 et seq., and Federal regulations 45 CFR 300 through 307.~~

~~2. The monthly support obligation will be assessed according to the child support guidelines enacted in Section 78-45-7.2 through 78-45-7.18. Collections plus third party payments during the month which exceed the monthly court ordered amount will be used to reimburse the state for past payments made in behalf of the child by the Division of Youth Corrections.~~

~~3. The cost of care is computed by multiplying the Division of Youth Correction's contract rate (according to the annual DYC contract/rate listing) for a particular facility, group home, or service by the number of days of care or service hours provided by the contractor as reported on the Youth Corrections Placement History Screen.~~

~~4. Third party payments are defined as entitlement benefits, insurance benefits, trust fund benefits, and so forth.~~

~~5. If funds are collected in excess of the total accumulated cost of care ORS shall distribute the excess to the division for deposit in the child's trust or to the custodial parent if the child has returned home.~~

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KEY: child support, foster care, youth corrections*, public assistance overpayments

~~[February 11, 1998]~~2000

Notice of Continuation December 15, 1997

- ~~[62A-7-124]~~62A-1-117
- ~~[62A-11-104]~~62A-7-124
- ~~[62A-11-107]~~62A-11-104
- ~~[62A-11-110]~~62A-11-107
- ~~[62A-11-111]~~62A-11-110
- ~~[62A-11-201]~~62A-11-111
- ~~[62A-11-301]~~62A-11-201
- 62A-11-301
- 78-3A-906
- 78-45-1
- 78-45-4.3
- 78-45-7

alter the way the department is already doing the agent review process. Therefore, there will be no impact on the insurance industry or the public at large.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on insurance consumers and no major fiscal impact on insurance companies and agents.

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

Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Jilene Whitby, Information Specialist

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Insurance, Administration **R590-160-8** Agency Review

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23160

FILED: 09/15/2000, 10:01

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of verbal and written comments received by the department, the following changes have been made to the rule for clarification purposes.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule are to make clear that informal as well as formal hearings are an option in the agent review process.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The changes in this rule will not require insurers to change their policy rates or forms which would have effected fees coming into the department, nor will the changes require additional or reduced work on the part of the Department.

❖LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency.

❖OTHER PERSONS: The changes to this rule will just make clear that informal hearings are an option in the agency review process. The changes will not alter the way the department is already doing the agent review process. Therefore, there will be no impact on the insurance industry or the public at large.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will just make clear that informal hearings are an option in the agency review process. The changes will not

**R590. Insurance, Administration.
R590-160. Administrative Proceedings.
R590-160-8. Agency Review.**

(1) Agency review of an administrative proceeding not otherwise final shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date of the entry of the date of an order issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Petitions for Review shall be filed in accordance with Section 63-46b-12.

(3) Review shall be conducted by the commissioner or a person or persons he may designate, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review and Submission Based On [of] the Record (Formal Proceeding) or Based On the File (Informal Proceeding).

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

(b)(i) A party requesting agency review shall set forth any factual or legal basis in support of that request[~~including adequate~~]; and

(ii) may include supporting arguments and citation to appropriate legal authority and;

(A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding[-]; or

(B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.

(c)(†) If a party challenges a finding of fact in the order subject to review, the party must demonstrate[-];

(i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding[-]; or

(ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.

(†)(d) A party challenging a legal conclusion must support [their]its argument with citation to any relevant authority and also;

(i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding[-]; or

(ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.

(†)(e)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall;

(A) order and cause a transcript of the record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590-160-6.A.5.b shall govern as to acquisition of hearing tapes for preparation of such transcript[-]; or

(B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.

(ii) When a request for agency review is filed under [such]the circumstances set forth under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

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

(5) Effect of Filing.

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

(b) The department may oppose the request for a stay in writing within 10[-]days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the commissioner determines that a stay would not be in the best interest of the public.

(c)(i) In determining whether to grant a request for a stay or a motion opposing that request, the commissioner shall review the findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare.

(ii) The commissioner may also enter an interim order granting a stay pending a final decision on the motion for a stay.

(iii) The commissioner may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(6) Memoranda.

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

(b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(e)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.

(ii) If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15[-]days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response:

(i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review[-shall be filed no later than 15-days from the filing of the request for agency review]; or

(ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review[- shall be filed no later than 15-days from the filing of any subsequent memoranda supporting the request for agency review].

(d) Any final reply memoranda shall be filed no later than 5[-] days after the filing of a response to the request for agency review and any memoranda supporting that response.

(7) Oral Argument.

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

(8) Standard of Review.

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

(9) Order on Review.

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

(b) An Order on Review may affirm, reverse or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

KEY: insurance
~~August 31, 2000~~
Notice of Continuation January 22, 1999

31A-2-201
63-46b-1
63-46b-5



**Labor Commission, Industrial
Accidents
R612-6
Notification of Workers' Compensation
Insurance Coverage**

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 23150
FILED: 09/14/2000, 15:43
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed rule broadens the options available to workers compensation insurance carriers for filing policy information with the Commission's Industrial Accidents Division.

SUMMARY OF THE RULE OR CHANGE: The proposed rule allows workers compensation insurance carriers to submit policy information to the Commission's Industrial Accidents Division by either of two methods: 1) the carrier can itself transmit the information; or 2) the carrier can use an appropriately certified agent to transmit the information. In either case the data must be formatted according to nationally accepted standards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-2-205

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: This rule should result in negligible cost or savings to state budgets because the Division is already prepared to accept information required from the insurance companies, whatever source they choose to submit it.
- ❖LOCAL GOVERNMENTS: By establishing alternative means for providing required information, this proposal may result in a slight savings to local governments in their capacity as employers. At this point, it is impossible to quantify such potential savings.
- ❖OTHER PERSONS: By establishing alternative means for providing required information, this proposal may result in a slight savings to employers. At this point, it is impossible to quantify such potential savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposal will not impose any additional compliance costs on any affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposal allows flexibility and competition in providing coverage data to the Commission. It will impose no new costs, but may allow competitive forces to reduce service costs to businesses.

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

Labor Commission
Industrial Accidents
Third Floor, Heber M. Wells Bldg.
160 East 300 South
PO Box 146610
Salt Lake City, UT 84114-6610, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Joyce Sewell at the above address, by phone at (801) 530-6988, by FAX at (801) 530-6804, or by Internet E-mail at icmain.jsewell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/06/2000

AUTHORIZED BY: R. Lee Ellertson, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-6. Notification of Workers' Compensation Insurance Coverage.
R612-6-1. Notification of Workers' Compensation Insurance Coverage.

Any insurance carrier subject to the policy reporting requirements of Section 34A-2-205 may satisfy such reporting requirements by either of the following methods:

1. The insurance carrier may directly file the required information electronically with the Industrial Accidents Division in accordance with the International Association of Industrial Accidents Boards and Commissions (IAIABC) standards and format.
2. Alternatively, the insurance carrier may use an agent to file the required information electronically with the Industrial Accidents Division in accordance with IAIABC standards and format, provided that the agent has been certified by IAIABC as meeting its electronic filing standards.

KEY: workers' compensation
2000

34A-2-205



Natural Resources, Water Rights

R655-4

Water Well Drillers

NOTICE OF PROPOSED RULE

(Repeal and reenact)

DAR FILE NO.: 23143

FILED: 09/12/2000, 11:17

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R655-4 is the rule which sets forth the requirements, procedures, and minimum construction standards which control the water well drilling industry in the state of Utah. The purposes of the rule are to assist in the orderly development of underground water; ensure that minimum construction standards are followed; prevent pollution of aquifers within the state; prevent wasting of water from flowing wells; obtain accurate records of well construction operations; and insure compliance with the state engineer's authority for appropriating water. The last revisions to the rule were minor in nature, however, over the past several years it has become apparent, for a variety of reasons, that more extensive changes were needed.

A committee of licensed well drillers and others from state agencies involved in the well drilling industry was organized in mid-1999 and met on a monthly basis to discuss the rule changes that were needed. Throughout this process drafts of the proposed rule changes were sent to each Utah licensed water well driller for comment. When the committee had completed its review of the rule, two public meetings were held and well drillers were invited to attend and comment. Based on the comments made at the meetings, revisions were made to the proposed rule.

The rule was re-organized and generally re-worded because the format of the old rule made it often difficult to locate a particular section, requirement, or construction standard. Also, some portions of the old rule either contradicted other portions of the rule or were unclear and misunderstood by the drillers.

Changes were made in some of the reporting and licensing requirements and other administrative aspects of the Utah Water Well Drilling Program to allow the Division of Water Rights to better enforce the rule and track those well drillers who violate the rule and the minimum construction standards. The Utah Groundwater Association approached the Division of Water Rights about requiring continuing well driller education each year as part of the well driller license renewal process. This had been a topic of discussion for several years. A continuing education program was formulated by the committee mentioned above and included in the administrative rule. The program has three stated objectives: 1) help the drillers and operators to become better trained and more efficient in their work and establish a system whereby they can demonstrate continuing competency; 2) increase compliance with the Administrative Rule For Water Well Drillers and the minimum construction standards

required by the state engineer; and 3) assist in protecting the ground waters of the state.

Some of the minimum construction standards were changed because the old rule was unclear or because experience had shown that the old standard did not provide adequate structural stability for the well or did not provide adequate protection against contamination of the underground water source.

SUMMARY OF THE RULE OR CHANGE: Section R655-4-1: There were no changes to this section, however, it was reorganized. Section R655-4-2: Several definitions were re-worded for clarity. Some definitions included regulations or construction standards which were moved from the definition to the appropriate section of the rules. Some definitions were added because new terms were included in the rules.

Section R655-4-3: The information in this section was taken from several sections of the old rules. It was re-written, re-organized, and re-numbered to clarify the requirements.

1) The following requirements were added to obtain a new well drillers license in order to better ensure that applicants were qualified to obtain well drilling licenses:

a) Provide documentation of at least 2 years of experience and 15 wells drilled by the applicant. Completion of classroom study may be substituted for some of the experience and drilled wells. There is no experience requirement listed in the existing rules, however, the ability to properly drill a well is mostly obtained through actual drilling experience.

b) Obtain a minimum score of 70% on each of the required tests. The existing rules require an average score of 70% on the tests taken by the applicant, however, this would allow an applicant to obtain a license even if they failed one of the required tests.

c) Pass an oral examination. This was added because there are some aspects of well drilling ability that cannot be assessed through a written test.

2) Drill rig operators must be registered with the state before January 1, 2001. Under the existing rules, registration of drill rig operators is optional and voluntary. There are no operators who are currently registered with the state. There have been many instances noted where the well rig operator has been left in responsible charge of the well drilling operation with inadequate training from the well driller and the wells were not properly constructed. The new rules require registration so the state can ensure that anyone in responsible charge of constructing a water well is knowledgeable of the minimum construction standards. The requirements include:

a) must be 18 years old,

b) must complete application and pay fee (same application fee as a drillers license),

c) provide documentation of 6 months drilling experience, and

d) obtain a minimum score of 70% on the required tests.

3) Apprentices must be 18 years old and may be listed with the state by completing an application form. Apprentices are not mentioned in the current rules and this is voluntary and optional in the new rules. It is included in the new rules to allow apprentices to document their experience in preparation for being registered as a drill rig operator.

Section R655-4-4: The information in this section was taken from several sections of the old rules. It was re-written, re-organized, and re-numbered to clarify the requirements.

1) The following changes were made to allow the Division of Water Rights to better track well drilling activity in the state.

a) Start Cards must be telephoned in, faxed in, or e-mailed in before starting to drill. The old rules allowed start cards to be mailed in. However, at times the start card was delayed in the mail and the well was completed before the Start Card was received.

b) The well driller's license number OR company name (exactly as it appears on the license) must be displayed on the drilling rig. The existing rule requires the number to be displayed, however, the driller name is also adequate identification.

c) When requested by the state engineer, samples must be taken at the specified intervals and submitted in the sample bags provided. This has been requested of drillers in the past but was not included in the rules. It is included to formalize the process of collecting samples needed by the state engineer.

d) An abandonment log form has been created which must be submitted on all wells that are abandoned and on all replacement wells even if the old well is not abandoned. In the past, well abandonments were reported on the official well driller report (well log) which often led to some confusion.

Section R655-4-5: The information in this section was taken from several sections of the old rules. It was re-written, re-organized, and re-numbered to clarify the requirements. This section includes the enforcement rules and regulations that were part of the previous version of the Administrative Rules for Water Well Drillers.

This section also describes a record keeping system that will be set up by the Division of Water Rights to monitor infractions of the administrative rules and help determine when a hearing should be held concerning a driller's license or drill rig operator's registration. The enforcement efforts of the division will not change as a result of implementing this new section. Periodic visits will continue to be made as in the past, but this system will allow the division to keep track of infractions noted on the visits.

Section R655-4-6: The information in this section was taken from several sections of the old rules. It was re-written, re-organized, and re-numbered to clarify the requirements.

The license renewal procedure for water well drillers includes a new requirement that well drillers obtain six continuing education credits each year by attending training sessions sponsored or sanctioned by the state engineer. This continuing education requirement has been supported and requested by the Utah Groundwater Association for several years. The purpose of the program is to increase the level of craftsmanship of water well drillers in the state, increase compliance with the administrative rules and minimum construction standards, and improve protection of the groundwater resources of the state. Continuing education programs are also being implemented by several of the surrounding western states.

The rule establishes a continuing education committee to assist the state engineer in evaluating and approving classes for the continuing education program.

The new rule establishes a process for renewing a registration for a drill rig operators which is similar to the process for a licensed well driller except that the continuing education credits are optional for a drill rig operator.

Section R655-4-7: This section is added in the new administrative rules as information for the well driller to explain the application and approval process for cathodic protection wells, heating or cooling exchange wells, and monitor wells. These types of wells are not processed through the Division of Water Rights regular approval process and often drillers submit the applications for approval to drill.

Section R655-4-8: The licensed driller must check the drilling location to see if it matches the approved Point of Diversion listed on the Start Card. Any discrepancy should be noted on the well log when submitted by the driller. The purpose of this requirement is to make sure the well is drilled at the approved location, and that potential interference with other nearby water rights does not occur.

Section R655-4-9: The changes are:

1) In order to eliminate the possibly inferior casing being placed in a well, steel casing must meet or exceed common ANSI, AWWA, or ASTM specifications.

2) PVC screen/casing less than 4.5 inches outside diameter must meet or exceed SDR 21 or Schedule 40 wall thickness specifications. PVC screen/casing equal to or greater than 4.5 inches outside diameter must meet or exceed SDR 17 or Schedule 80 wall thickness specifications. Previously, SDR 21 casing was acceptable, however, incidents of casing collapse and cracking prompted these changes.

3) The maximum depth at which plastic well casing can be placed must conform with the requirements and limitations of ASTM Standard F480. This standard provides guidance for PVC casing depth depending on directional pressures inside and outside of the well casing.

4) Require that a steel protective casing extending at least 2.5 feet in depth and 18 inches above ground be placed around PVC well casing and sealed. PVC wells tend to be damaged by bumping, freezing, or ultraviolet radiation when left exposed at the surface.

5) Prohibit driving plastic or non-metallic casing.

6) The surface seal rules were vague and difficult to interpret in the existing rules, and due to this, some surface seals were not adequate. This allowed for surface contamination to enter the well and contaminate the aquifer and well water. The surface seal rule was restructured so that it was clear and concise, all drillers were installing an equally acceptable surface seal. In addition, given the increased possibility of contamination of drinking water aquifers with increased development, the surface seal depth was increased from 18 feet to 30 feet. A 2-inch annular seal to a depth of at least 30 feet is required on all wells and with all drilling methods. Seal materials must consist of neat cement grout, sand cement grout, high solids bentonite grout, or unhydrated bentonite as defined in Section R655-4-2. Hydrated cement or bentonite grout must be placed from the bottom up to ensure a continuous seal with out bridging or segregation. The use of drilling bentonite and cuttings for surface seal is prohibited due to the inferior, unknown, or unpredictable sealing properties of these materials. In order to reduce bridging in the annulus, unhydrated bentonite must not be gravity placed

below a depth of 50 feet. Temporary conductor casing used to facilitate the installation of the surface seal must be removed upon completion of the well and sealing, or it must be perforated and the seal materials placed with pressure. The annular space for the filter pack and/or surface seal interval should be estimated and an equal volume of filter or seal material installed.

7) A sounding device or other means should be used when placing filter material or unhydrated bentonite to ensure that bridging does not occur.

8) If a gravel feed pipe is installed in the annular space between the well casing and borehole wall, the annular space shall be increased to accommodate seal placement around the pipe.

9) All wells designed for water production must be disinfected prior to completion of work and removing drill rig in order to destroy bacteria or other organic contamination introduced during the drilling process.

10) Explosive shot perforators can be used in the well casing if used according to specifications.

11) Require drillers to secure unattended wells or boreholes so that debris, children, or animals cannot enter the well.

12) The special standard which allowed 0.188-inch wall thickness steel casing to be installed in certain sections of Hydrologic Areas 71, 73, 75, and 77 has been eliminated. These areas must now comply with the casing standards defined in Subsection R655-4-9(9.2). A valid reason for the special casing exemption could not be determined.

13) Hydraulic fracturing is acceptable as long as the well casing is not pressurized. Equipment shall be properly disinfected. Hydraulic fracturing information shall be noted on the well log.

14) The well shall be properly developed upon completion and a test performed to determine the minimum acceptable well yield. A static water level measurement shall also be taken. This information must be noted on the well log. This information is critical for the owner to determine proper pump size and long term yield of the well, and it is important information that can be used to characterize local and regional groundwater flow patterns.

Section R655-4-10: This is a new section that was created in the construction standard section of the rules. Items in this section were moved from Sections R655-4-1 and R655-4-13 of the existing rule.

For cathodic protection wells: 1) a surface seal must be installed; 2) separate aquifers must be sealed; 3) fill materials must be clean and contaminant free; 4) casing and pipe must follow well specifications; and 5) the casing must be at least 2 inches in diameter to facilitate abandonment.

Section R655-4-11: Section R655-4-9 of the old rule is renumbered to R655-4-11.

In order to ensure that the well is not contaminated or damaged during cleaning or repair work, several requirements were added including: 1) clean and disinfected tools must be used; 2) tools should be used properly to not damage the well; 3) the surface seal must be replaced if damaged; 4) Debris, sediment, or other material must be removed from the well and aquifer after work; 5) chemicals designed to rehabilitate a well must be designed for that purpose and used according to manufacturer's

recommendations; 6) a well drillers license is required; and 7) the well must be disinfected following work on the well.

Section R655-4-12: The changes are:

1) A temporarily abandoned well must have a surface seal. The well and aquifer can easily be contaminated during the 90 day temporary abandonment period.

2) Prior to abandoning a well, a licensed driller must notify the state engineer's office and submit an official well abandonment form after completion of abandonment.

3) Abandonment materials can include neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite. Other sealing materials or additives must be approved by the state engineer.

4) Prior to well abandonment, debris such as pumps, cable, and piping must be removed from the well to the extent possible.

5) The approximate volume of material required to abandon a well must be calculated prior to abandonment.

Section R655-4-13: The changes are:

1) Restricted the placement of screens or perforations across multiple water bearing zones or aquifers to guard against cross contamination and commingling. If nested wells are installed in the same borehole, the annular space between the screened or perforated intervals must be sealed. Monitor well casing or screen must meet ASTM standards, or at least consist of 304 or 316 stainless steel, Teflon, or Schedule 40 PVC.

2) The gravel/filter pack must meet requirements of Subsection R655-4-9(9.5.2). Monitor well gravel/filter pack does not need to be disinfected. The gravel/filter pack must be placed to avoid bridging and voids.

3) A surface seal must be placed in accordance with Subsection R655-4-9(9.5.2). A minimum surface seal depth is not designated. Fine sand or unhydrated bentonite must be placed above the gravel/filter pack prior to grouting to avoid penetration of the grout into the filter and well intakes.

4) Drillers must properly dispose of drill cuttings, water, and other investigation derived wastes in accordance with state and federal guidelines.

5) If the monitor well is steel, a water resistant, locking cap must be installed on the casing above ground surface. If the monitor well is PVC or Teflon with an above ground completion, a steel protective casing must be placed around the plastic casing at the surface. The protective casing must have a locking cap, and the well casing must have a water tight cap. If the above ground completion is in a high traffic area, steel posts and a concrete pad should be installed around the well. If the well is completed flush with the ground surface, a lockable water tight cap must be installed in the well casing. A metal flush-mount vault must be installed around the well at the surface and be equipped with a removable water tight lid.

6) Monitor wells that are 30 feet or deeper must be abandoned in accordance with Section R655-4-12.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ASTM - Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in

Standard Dimension Ratios (SDR), SCH 40 and SCH 80; November 1995

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No budgetary increases are anticipated as a result of this rule change, although there will be an increased workload for staff in the Division of Water Rights, as a result of operator registration requirements, administration of the continuing education program for well drillers and the administration of a records system for tracking rule violations.

A yearly registration renewal fee will be required for a well rig operator license (to be determined by the legislature) and administered by the Division of Water Rights.

State agencies that wish to drill, repair, renovate or abandon a well, may incur increased costs due to new regulations required of those in the well drilling industry.

❖LOCAL GOVERNMENTS: Government agencies that wish to drill, repair, renovate or abandon a well, may incur increased costs due to new regulations required of those in the well drilling industry.

❖OTHER PERSONS: Individuals, corporations, and industries that wish to drill, repair, renovate, or abandon a well, may incur increased costs due to new regulations required of those in the well drilling industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will affect those well drillers who must update their drilling procedures to meet with the changes in minimum construction standards. These costs will vary as to the nature and extent of the business of the individual well driller. A yearly registration renewal fee (to be determined by the legislature) will be required for well rig operators and administered by the Division of Water Rights. Continuing education requirements will result in minimal cost increases to those in the well drilling profession. Compliance costs will vary for those who wish to drill, repair, renovate, or abandon a well in the state of Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is recognized that the changes in the minimum construction standards and the requirement to obtain continuing education credits will have an impact on the water well drillers in the state of Utah. However, the benefits to be gained from the changes (increased compliance with the administrative rule, increased well driller craftsmanship, and increased protection of the state's groundwater aquifers) appear to outweigh the fiscal impacts to the well drilling industry. Kathleen Clarke

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

Natural Resources
 Water Rights
 Suite 210
 1594 West North Temple
 PO Box 146300
 Salt Lake City, UT 84114-6300, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mary Beth Gray at the above address, by phone at (801) 538-7370, by FAX at (801) 538-7467, or by Internet E-mail at nrwr.tbgray@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 11/01/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2001

AUTHORIZED BY: Robert L. Morgan, State Engineer

R655. Natural Resources, Water Rights.

~~[R655-4. Water Well Drillers.~~

~~**R655-4-1. Purpose.**~~

~~—These rules are promulgated pursuant to Section 73-3-25. The purpose of these rules is to assist in the orderly development of underground water, insure that minimum construction standards are achieved in the drilling and repairing of water wells, prevent pollution of aquifers within the state, prevent wasting of water from flowing wells, obtain accurate records of well drilling operations, and insure compliance with the state engineer's authority for appropriating water.~~

~~—1.1 Minimum Acceptable Standards:~~

~~—Construction standards outlined in this document are meant to serve as minimum acceptable standards. In some cases, more stringent standards would be called for if compliance with these rules would not result in a well which is free from pollution, or would be a source of subsurface leakage, or would result in contamination of the groundwater resource.~~

~~—1.2 Monitor Wells 30 Feet or Deeper:~~

~~—To provide for protection of the water resources of the state and obtain valuable information on the aquifers of the state, Section 73-3-22 and the rules have been amended to include the drilling of water monitoring wells which are completed to depths of 30 feet or greater below natural ground surface.~~

~~—1.3 Heating or Cooling Exchange Wells:~~

~~—Wells or boreholes utilized for heat exchange or thermal heating, which are 30 feet or greater in depth and encounter formations containing groundwater, must be drilled by a currently licensed driller and the owner or applicant must have an approved application for that specific purpose. Wells or boreholes installed for heat or thermal exchange process must comply with the minimum construction standards governed by these rules. If a separate well or borehole is required for re-injection purposes, it must also comply with these construction standards and the groundwater must be injected into the same water bearing zones as from which it is initially withdrawn. The quality and quantity of groundwater shall not be diminished or degraded upon re-injection.~~

~~—1.4 Cathodic Protection Wells:~~

~~—A cathodic protection well is a well constructed for the purpose of installing deep anodes to minimize or prevent electrolytic corrosive action of metallic structures installed below ground surface, such as pipe lines, transmission lines, well casings, storage tanks, or pilings. Cathodic protection wells are constructed in a similar manner to production water wells and may penetrate water bearing zones, and care must be taken to insure protection of~~

groundwater resources. Therefore, all construction standards outlined in these rules must be adhered to when constructing cathodic protection wells with the following additional standards being met:

— a) The conductive backfill material placed around the anodes within the borehole and the non-conductive backfill placed above the anodes must be non-toxic and free of contaminants.

— b) The annular space surrounding the gas dissipating vent pipe or casing must be a minimum of 4" larger in diameter and must be sealed in accordance with Section R655-4-8.2.

— c) The well must be constructed in a manner to prevent commingling of water from different aquifers, cross contamination, or degradation of known potable water sources.

— d) The well must be constructed by a currently licensed well driller as required by these rules. Figure 5, dated December 15, 1994, refers to the construction requirements of a typical cathodic protection well installation which is incorporated by reference to these rules.

— 1.5 Recharge and Recovery Wells.

— Any well drilled under the provisions of Section 73-3b-101, "Groundwater Recharge and Recovery Act" shall be constructed in a manner consistent with these rules and shall be drilled by a currently licensed driller.

— 1.6 Public Water System Supply Wells.

— Public water system supply wells are subject to additional requirements established by the Drinking Water Board, pursuant to their authority under Subsection 19-4-104(1)(a) and the rules established under Section R309-113-1. The State of Utah, Department of Environmental Quality (DEQ), Division of Drinking Water (DDW), may be contacted for additional information regarding public water system supply wells. Plans and specifications for a public water system supply well must be reviewed and approved by the Division of Drinking Water before the well is drilled.

— 1.7 Beneficial Use or Utilization of Groundwater.

— Both monitor and production wells constructed to a final depth of less than 30 feet below ground level shall not be governed by these rules. However, diversion and beneficial use of groundwater from wells less than 30 feet deep shall require approval through the appropriation procedures and policies of the state engineer and Section 73-3-1 and Section 73-3-2.

— 1.8 Geothermal Well Exclusion.

— It is not intended that these rules govern the drilling of geothermal wells. Anyone contemplating the drilling of geothermal wells is subject to Section 73-22-1, "Utah Geothermal Resource Conservation Act" and the rules promulgated pursuant to that section. The State Engineer's Office can be contacted for information regarding drilling of geothermal wells.

— 1.9 Embankment or Foundation Borehole Exclusion.

— It is not intended that the following rules govern the drilling of temporary exploratory holes that are drilled to obtain information on the subsurface strata on which an embankment or foundation is to be placed, or an area proposed to be used as a potential source of material for construction.

— 1.10 Wells for Instrumentation or Structural Performance Exclusion.

— Wells or boreholes constructed to monitor man-made structures, house instrumentation to monitor structural performance, or dissipate hydraulic pressures on structures are exempt from the

following rules, provided that the wells or boreholes do not interfere with established aquifers, or their primary purpose is not for monitoring water quality.

— 1.11 Earth Coupled Heat Exchange Well Exclusion.

— Wells or boreholes which are drilled or otherwise constructed into nonwater bearing zones or which are less than 30 feet in depth, for the purpose of utilizing heat from the surrounding earth, shall not be governed by these rules. Geotechnical borings drilled for Preliminary Site Assessment (PSA) or to obtain lithologic data, which are not installed for the purpose of utilizing or monitoring groundwater also are not governed by these rules.

— 1.12 Administrative Procedures for Informal Proceedings.

— All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by R655-6, Administrative Procedures for Informal Proceedings Before the Division of Water Rights.

R655-4-2. Definitions.

— 2.1 Abandoned Well—a well whose purpose and use have been permanently discontinued or a well that is in a state of disrepair and its intended purpose cannot be reasonably achieved. A well can be abandoned only after being properly sealed according to the requirements of Section R655-4-12.

— 2.2 American National Standards Institute (ANSI)—a nationally recognized testing laboratory which certifies building products and adopts standards including those for steel and plastic (PVC) casing utilized in the well drilling industry. ANSI standards are often adopted for use by ASTM and AWWA. Current information on standards can be obtained from: ANSI, 1430 Broadway, New York, NY 10018.

— 2.3 American Society for Testing and Materials (ASTM)—an independent organization concerned with the development of standards on characteristics and performance of materials, products and systems including those utilized in the well drilling industry. Information may be obtained from: ASTM, 1916 Race Street, Philadelphia, PA 19113.

— 2.4 American Water Works Association (AWWA)—An international association which publishes standards intended to represent a consensus of the water supply industry that the product or procedure described in the standard will provide satisfactory service or results. Information may be obtained from: AWWA, 6666 West Quincy Avenue, Denver CO 80235.

— 2.5 Annular Space—the space between the inner well casing and the outer well casing or borehole.

— 2.6 Aquifer—a porous underground formation yielding usable amounts of withdrawable water.

— 2.7 Artesian Aquifer—a water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

— 2.8 Artesian Well—a well where the water level rises appreciably above the zone of saturation.

— 2.9 Bentonite—a highly plastic, highly absorbent, colloidal clay composed largely of mineral montmorillonite.

— 2.10 Casing—a tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

— 2.11 Clay-Slurry—a mixture of bentonite, other expansive clays, or fine-grained material and water, in a ratio of not less than 8 pounds of bentonite or expansive clay per gallon of water. The

slurry must be composed of not less than 50% expansive clay with the maximum size of the remaining portion not exceeding that of coarse sand:

— 2.12 Consolidated Formation—bedrock consisting of sedimentary, igneous, or metamorphic rock. A consolidated impermeable formation shall have sufficient thickness to form a geologic barrier in the vicinity of the well in order to be incorporated in the surface grout seal of a well.

— 2.13 Drawdown—the difference in elevation between the static and pumping water levels.

— 2.14 Gravel Packed Well—a well in which filter material is placed in the annular space to increase the effective diameter of the well and to prevent fine-grained sediments from entering the well.

— 2.15 Grout—a fluid mixture of portland cement and water of a consistency that can be forced through a pipe and placed as required. Various additives, of sand, bentonite, and hydrated lime, may be included in the mixture to meet different requirements.

— 2.16 Monitor Well—a well as defined in Section R655-4-2.28 which is constructed for the purpose of determining water levels, monitoring chemical, bacteriological, radiological, or other physical properties of ground water or vadose zone water. Monitor wells, for the purpose of these rules, less than 30 feet deep need not be constructed by a licensed well driller unless specifically directed by the state engineer. Additionally, official well driller's reports or well logs are not required for monitor wells completed to a depth of less than 30 feet below natural ground surface.

— 2.17 National Sanitation Foundation (NSF)—a voluntary third party consensus standards and testing entity established under agreement with the U.S. Environmental Protection Agency (EPA) to develop testing and adopt standards and certification programs for all direct and indirect drinking water additives and products. Information may be obtained from: NSF, 3475 Plymouth Road, PO Box 1468, Ann Arbor, Michigan 48106.

— 2.18 Neat Cement Grout—cement conforming to the American Society for Testing and Materials (ASTM) Standard C150 (standard specification of Portland cement), with no more than six gallons of water per 94 pound sack of cement.

— 2.19 Operator—a drilling-machine operator is an individual who is employed by a driller holding a current Utah Well Driller's license for the purpose of constructing wells using equipment owned by the licensee.

— 2.20 Provisional Well—Authorization granted by the state engineer to drill under a pending, unapproved water right or exchange, or for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Provisional well approvals are granted by the state engineer on a case by case basis upon review of hydrogeologic conditions, existing rights in the area, potential for interference and current appropriation policy and the provisions of Section 73-3-1 and Section 73-3-2.

— 2.21 Public Water System Supply Well—a well, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.

— 2.22 State Engineer—state engineer means the Director of the Utah Division of Water Rights or any employee of the Division of Water Rights designated by the state engineer to act in administering these rules.

— 2.23 Static Level—stabilized water level in a nonpumped well beyond the area of influence of any pumping well.

— 2.24 Tremie Pipe—a device that carries materials to a designated depth in a drill hole or annular space.

— 2.25 Unconsolidated Formation—loose, incoherent rock material composed of sedimentary, igneous, or metamorphic rock which includes sand, gravel, and mixtures of sand and gravel. These formations are widely distributed and can possess good storage and water transmissivity characteristics.

— 2.26 Vadose Zone—the zone containing water under less than atmospheric pressure, including soil water, intermediate vadose water and capillary water. The zone extends from land surface to the zone of saturation or water table.

— 2.27 Valid Authorization to Drill—shall consist of any of the following:

- a) An approved application to appropriate.
- b) A "provisional well" approval letter.
- c) An approved permanent change application.
- d) An approved exchange application.
- e) An approved temporary change application.
- f) An approved application to renovate, replace, or deepen an existing well.
- g) An approved "monitor well" letter.
- h) Any letter or document from the state engineer directing or authorizing a well to be drilled or work to be done on a well.

Most authorizations to drill expire after predetermined periods of time as specified by the state engineer. Items a) through f) of Section R655-4-2.27, allow the applicant to contract with a well driller to drill or renovate exactly one well at each point of diversion listed on the approved form. When the work contemplated is completed or abandoned, the permission to drill terminates. An approved provisional well or monitor well letter is a special case permitting exploratory drilling but allowing only enough water to be diverted from the approved points to determine the characteristics of the ground water source or to monitor groundwater as defined in Section R655-4-2.16.

— 2.28 Well—a horizontal or vertical excavation or opening into the ground made by digging, boring, drilling, jetting, or driving or any other artificial method for utilizing or monitoring underground waters.

— 2.29 Well Driller—any person duly licensed by the state engineer that constructs a well for compensation or otherwise.

— 2.30 Well Drilling—the act of constructing, repairing, renovating, or deepening a well, including all incidental work.

R655-4-3. Well Driller's Licenses:

— 3.1 General:

Section 7-3-25 requires every person that constructs a well in Utah to obtain an annual well driller's license from the state engineer and to file with him a bond in the penal sum of \$5000 which is payable to the Office of the State Engineer and to comply with the law and rules for well drillers. Applications for well driller's licenses shall be made on forms furnished by the state engineer. All licenses expire at 12 midnight on the 31st day of December following their issuance and are not transferable.

— 3.2 Application for License:

— Before a Utah well driller's license will be issued, the applicant must do all of the following:

— 3.2.1 Apply to the state engineer on forms provided for that purpose, including documentation of prior well drilling experience.

— 3.2.2 Pay an initial application fee, which amount has been submitted to and approved by the legislature as part of the annual appropriations request as stated in Subsection 63-38-3-(2)(a). Current initial application and renewal fees for licensing are available from the state engineer.

— 3.2.3 File a bond in the penal sum of \$5,000 with the state engineer, which is conditioned upon proper compliance with the law and these rules and effective for the calendar year in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer".

— 3.2.4 Obtain a score of at least 70% on the written and oral examination administered by the state engineer to test the applicant's knowledge of:

- a) Utah Water Law as it pertains to underground water;
- b) Property description by section, township, and range;
- c) Geologic formations and proper names used in describing underground material types;
- d) Groundwater geology and the occurrence and movement of groundwater;
- e) The rules for water well drillers;
- f) The minimum standards for well construction determined by the state engineer;
- g) The proper construction methods and techniques for the various types of well drilling rigs, equipment, and hardware the applicant proposes to use to construct wells in the state.

— 3.2.5 If the applicant fails to obtain the minimum passing score on the written and oral examination he may make re-application to the state engineer for a license and re-examination 90 days from the date of the previous application.

— 3.2.6 Applicants shall be 21 years of age or older.

— 3.2.7 The state engineer may issue a restricted, conditional or limited license to an applicant based on prior drilling experience, drilling performance and compliance with established rules and construction standards for a time period prescribed by the state engineer.

— 3.3 Operator Registration Requirements

— 3.3.1 An operator may become registered with the State Engineer's Office in order to substantiate claims of experience when applying for a well driller's license at a future date.

— 3.3.2 An operator may become registered with the State Engineer's Office by doing all of the following:

— 3.3.2.1 Filing an application with the state engineer on forms provided for that purpose.

— 3.3.2.2 Obtaining a score of at least 70% on a written and oral examination to test the applicant's knowledge of:

- a) Property description by section, township, and range;
- b) Geologic material and proper names used in describing underground material types;
- c) The rules for water well drillers; and;
- d) The minimum standards for well construction as determined by the state engineer.

— 3.3.2.3 An operator must be under the direct supervision of a well driller holding a current Utah well driller's license. The licensee need not be continually present at the drilling site but must provide direct supervision on a regular and frequent basis as the work progresses.

— 3.4 Drilling Without a License. Any person found to be drilling a well without a valid well driller's license will be ordered to cease and desist by the state engineer. The cease and desist order may be made verbally but must be followed by a written order. The order may be posted at an unattended well or drilling site. A person found drilling without a license will be prosecuted under Section 73-3-26. (See Section R655-4-5.8)

R655-4-4. General Procedural Requirements.

— 4.1 Continuation of License.

— All drillers, as a condition of the continuation of their license to drill wells in Utah shall do all of the following:

— 4.1.1 Prior to commencing any work on a well, file with the state engineer written notice of that intention on a "start" card furnished by the state engineer. For any approval to drill authorized after January 1, 1993 the start card will be obtained from the applicant or well owner and must be submitted to the state engineer prior to the beginning of well construction. For any approval to drill prior to January 1, 1993, the driller must submit a start card provided by the state engineer prior to the beginning of well construction. The "start" card shall include the following:

- a) The date on which it is proposed to commence work;
- b) The projected completion date;
- c) The nature of the work to be performed;
- d) The name of the party for whom the well is to be drilled, replaced or renovated.

— c) The currently valid authorization to drill, approved by the state engineer as described in Section R655-4-2.27.

— f) The diameter of casing to be used;

— g) The location of the well by section, township and range;

— h) The card shall be signed and dated by the licensed well driller.

— When a single authorization is given to drill wells at more than one point of diversion, a start card shall be submitted for each location to be drilled. For convenience, the start card information may be submitted by telephone or via telephone facsimile to the state engineer prior to the beginning of well construction. However, the start card itself must always be mailed or otherwise submitted to the state engineer.

— 4.1.2 Comply with the minimum well construction standards as adopted by the state engineer and included in these rules.

— 4.1.3 Have a qualified operator or licensee at the well site at all times during the actual work of construction, development or abandonment of the well. All persons operating under a well driller's license shall be employees of the well driller and use the licensed well driller's equipment. All wells, when unattended during construction or renovation shall be securely covered in a manner to prevent debris or contamination from entering the well or borehole.

— 4.1.4 Not allow any person to engage in the well drilling business under the authorization of their license without prior review and written consent of the state engineer.

— 4.2 License Number Displayed.

— The well driller's license number, assigned by the state engineer, must be prominently displayed on every well drilling rig operated in the state.

— 4.3 Official Well Drillers Report (Well Log):

— Within 30 days of the completion or abandonment of any well, the driller shall file an official well drillers report (well log) with the

state engineer. The official well drillers report (well log) will be mailed, or otherwise directed to the licensed driller upon receipt of the intention to drill or "start" card as described in Section R655-4-4.1.1. The official well drillers report shall be submitted on forms furnished by the state engineer and shall contain all information he may require, including the following:

- a) The name and license number of the driller;
- b) The name and post-office address of the well owner;
- c) The number of the valid authorization to drill or in the case of a well drilled under a provisional or monitor well letter, the date of the letter and designated approval number.
- d) The location of the well by section, township, and range, and course and distance from an established outside section corner or quarter corner.
- e) The size and type of casing, screen, perforations, packers or seals installed in the well.
- f) The total depth of the well and borehole and depths of all installed casings or screens.
- g) The lithologic log of the well based on strata samples taken from the borehole as drilling progresses.
- h) The beginning and completion dates for construction, renovation or abandonment of the well;
- i) The temperature and quantity of water issuing, drawn, or test pumped from the well.
- j) The location of all water-bearing strata.
- k) The static water level in the well at the time of completion.
- l) The drilling methods and fluids used in the construction of the well.

For the purposes of these rules, a well will be considered completed or abandoned when the well driller removes his drilling rig from the well site, unless the well driller provides written notice to the state engineer that he plans to continue work at some later date as provided in Section R655-4-12.1.

4.3.1 Accuracy and completeness of the submitted official well drillers report (well logs) are required. Of particular importance is the lithologic section which should accurately reflect the geologic strata penetrated during the drilling process. Sample identification must be logged in the field as the borehole advances and the information transferred to the official well drillers report (well log) form for submittal to the state engineer.

4.4 Amended Official Drillers Report (Well Log):

An amended official drillers report (well log) may be submitted by the licensed driller if it becomes known that the original report contained inaccurate or incorrect information, or if the original report requires supplemental data or information. Any amended official well drillers report must be accompanied by a written statement, signed and dated by the licensee, attesting to the circumstances associated with and the reasons for submitting the amended official well drillers report.

4.5 Bond Continuation:

The well driller shall have the required penal bond continually in effect during the term of the well driller's license.

4.6 Verification of Authorization to Drill:

The well driller shall make certain that a valid authorization or approval exists to drill before beginning drilling. The authorizations to drill listed in Section R655-4-2.27, allow the applicant to contract with a well driller to drill, replace or renovate

exactly one well at each location listed on the approved form. When the work is completed or abandoned, the permission to drill is terminated. An approved provisional well letter is a special case permitting drilling prior to formal approval, or exploratory drilling, but allowing only enough water to be diverted to determine the characteristics of the groundwater source.

R655-4-5. Penalties:

5.1 License Suspension and Revocation:

The state engineer, upon investigation and after a hearing, on at least ten days' notice given to the licensee by registered mail, may revoke or suspend any well driller's license either permanently or for a fixed period determined by the state engineer, if he finds that the well driller has done any of the following:

- a) Intentionally made a material misstatement of fact in his application for a license;
- b) Intentionally made a material misstatement of fact in an official well driller's report or amended official well drillers report (well log);
- c) Been found to be incompetent as a well driller;
- d) Willfully violated any of the prescribed rules;
- e) Failed to submit notice of intention to drill (start card) in accordance with the rules;
- f) Failed to submit an official well drillers report (well log), completed in accordance with these rules;
- g) Allowed any person to operate drilling equipment under authorization of their license without prior written approval by the state engineer.

5.2 Exacting of Bond:

If the state engineer determines, following an investigation and a hearing upon at least ten days notice to the licensee, by registered mail, that the licensee has failed to comply with the rules, the state engineer may exact the bond and deposit the money as a non-lapsing dedicated credit.

5.3 Investigation of Driller Induced Deficiencies:

The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the rules by any well driller.

5.4 Re-Licensing Following Revocation or Suspension:

After the period set by the state engineer under a revocation or suspension of a well driller's license has expired, a well driller may make application for a new license as provided in Section R655-4-3.2.1 through R655-4-3.2.5.

5.5 Prohibition of Operating During License Revocation:

A well driller who has had his license revoked or suspended will be prohibited from operating well drilling equipment during the revocation or suspension period set by the state engineer.

5.6 Refusal to Issue License:

The state engineer may, upon investigation and after a hearing, refuse to issue a license to an applicant if it appears:

- a) That he has not had sufficient training or experience to qualify him as a competent well driller or;
- b) That he has intentionally violated the Utah Statutes governing well drillers or these rules relating to well drilling or;
- c) That he has intentionally made a material misstatement of fact in an application for a license, in an official well driller's report, or in any other document filed with the state engineer or Division of Water Rights.

- 5.7 Lack of Knowledge:
- Lack of knowledge of the law or the rules relating to well drilling shall not constitute an excuse for violation thereof.
- 5.8 Violations as a Class B Misdemeanor:
- In part, Section 73-3-26 provides that any person who:
- (a) drills a well or wells or advertises or holds themselves out as a well driller without first obtaining a license or
- (b) drills a well or wells after license revocation or expiration or
- (c) drills a well in violation of the rules is guilty of a class B misdemeanor and
- (d) each day that violation continues is a separate offense.

R655-4-6. Renewal of Well Driller's License and Operator's Registration:

- 6.1 Active Licenses
- 6.1.1 All well driller's licenses expire at 12 midnight on December 31 of the year in which they are issued. Renewal of license will be made upon payment of a fee determined and approved by the legislature pursuant to Section 63-38-3.2, written application to the state engineer, submission of proof of \$5,000 penal bond for the next calendar year, and proper submission of all start cards and official well drillers reports (well logs) for the current calendar year. Renewal of an operator's registration will be made upon written application to the state engineer.
- 6.1.2 Having met all requirements as set forth in Section 655-4-6.1, on or before 12 midnight December 31, the licensee shall be authorized to operate as a well driller until his new license is issued.
- 6.1.3 License renewal applications not meeting the requirements of Section R655-4-6.1 or received after their December 31, expiration date will be assessed an additional administrative late fee determined and approved by the legislature pursuant to Section 63-38-3.2, before the state engineer will consider license renewal.
- 6.2 Renewal of Inactive Licenses
- 6.2.1 Drillers who have held an active license within the previous 24 months of the license expiration date shall make application under provisions of Section R655-4-6.1.
- 6.2.2 Drillers who have not held an active license within the previous 24 months of license expiration date shall make application under the provisions of Section R655-4-3.2 through Section R655-4-3.7.

R655-4-7. Minimum Construction Standards:

- 7.1 General:
- The failure of a water well driller to abide by these minimum standards can result in any of the following: (1) the revocation or suspension of his well driller's license, (2) a finding that he is guilty of a misdemeanor, as provided under Section 73-3-26, (3) the exacting of the \$5,000 bond by the state engineer.
- In some locations, the compliance with the following minimum standards will not result in a well being free from pollution or from being a source of subsurface leakage, waste, or contamination of the groundwater resource. Since it is impractical to attempt to prepare standards for every conceivable situation, the well driller shall use his judgement to construct wells under more stringent standards when such precautions are to protect the groundwater supply and those using the well in question.

- 7.1.2 Use of NSF, ASTM, AWWA or ANSI certified products, materials or procedures. Any product, material or procedure designed for use in the drilling, construction, cleaning, renovation, development or abandonment of water or monitor wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized and is incorporated by reference to these rules. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in Section R655-4-7.1.2.
- 7.2 Well Casing:
- It shall be the sole responsibility of the well driller to determine the suitability of any type of well casing for the particular well he is constructing, in accordance with these minimum requirements. The well casing shall extend a minimum of 18 inches above finished ground level and the natural ground surface should slope away from the casing.
- 7.2.1 Steel Casing:
- All steel casing installed in Utah shall be in new or like-new condition, being free from pits or breaks, and shall meet the minimum specifications listed in Table 1, dated December 15, 1994, which are incorporated by reference to these rules.

TABLE 1
MINIMUM WALL THICKNESSES FOR STEEL WALL CASING

Nominal Casing Diameter (In)	DEPTH							
	0 to 200 (Ft)	200 to 300 (Ft)	300 to 400 (Ft)	400 to 600 (Ft)	600 to 800 (Ft)	800 to 1000 (Ft)	1000 to 1500 (Ft)	1500 to 2000 (Ft)
2	.154	.154	.154	.154	.154	.154	.....	.....
3	.216	.216	.216	.216	.216	.216	.....	.....
4	.237	.237	.237	.237	.237	.237	.237	.237
5	.250	.250	.250	.250	.250	.250	.250	.250
6	.250	.250	.250	.250	.250	.250	.250	.250
8	.250	.250	.250	.250	.250	.250	.250	.250
10	.250	.250	.250	.250	.250	.250	.313	.313
12	.250	.250	.250	.250	.250	.250	.313	.313
14	.250	.250	.250	.250	.313	.313	.313	.313
16	.250	.250	.313	.313	.313	.313	.375	.375
18	.250	.313	.313	.313	.375	.375	.375	.438
20	.250	.313	.313	.313	.375	.375	.375	.438
22	.313	.313	.313	.375	.375	.375	.375	.438
24	.313	.313	.375	.375	.375	.438	.....	.....
30	.313	.375	.375	.438	.438	.500	.....	.....

- 7.2.2 Plastic Casing:
- PVC, SR, ABS, etc. casing may be installed in Utah upon obtaining permission of the well owner. Plastic well casing shall be manufactured and installed to conform with the American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) Standard F 480-94, Standard Dimension Ratio (SDR) 21 which are incorporated by reference to these rules. The casing is normally marked "WELL CASING" and with the ANSI/ASTM designation "F 480-94, SDR-21". All plastic casing for use in potable water supplies shall be manufactured to be acceptable to the American National Standards Institute/National Sanitation Foundation (ANSI/NSF) standard 61. Other types of plastic casings may be installed upon manufacturers certification

that such casing meets or exceeds the above described ASTM/SDR specification or ANSI/NSF approval. Minimum specifications are given in Table 2 dated December 15, 1994 which is incorporated by reference to these rules.

7.2.3 PVC well casing exceeding 4-1/2" outside diameter with a schedule 40 designation does not meet the minimum wall thickness required under ASTM Standard F480-94 for the SDR 21 specification shown in Table 2. Therefore, any PVC casing exceeding 4-1/2" outside diameter must be designated schedule 80 or greater to insure that minimum wall thickness and collapse strengths are maintained. Additionally, caution should be used whenever other than factory slots or perforations are added to PVC well casing. The installation of hand cut slots or perforations significantly reduces the collapse strength tolerances of unaltered casings.

TABLE 2
WALL THICKNESS FOR THERMOPLASTIC
WATER WELL CASING PIPE

Nominal Casing Diameter (In.)	Minimum Thickness (In.)	SDR
2	0.133	21
2.5	0.137	21
3	0.167	21
3.5	0.190	21
4	0.214	21
5	0.265	21
6	0.316	21
8	0.410	21
10	0.511	21
12	0.606	21
14	0.667	21
16	0.762	21

ASTM Specification, F480-94

7.2.4 Fiberglass casing and screen.

Fiberglass reinforced plastic well casings and screens may be installed in wells upon obtaining permission of the well owner. All fiberglass casing or screens installed in wells for use in potable water supplies shall be manufactured to be acceptable by American National Standards Institute/National Sanitation Foundation Standard 61.

7.3 Casing Joints.

All well casing joints shall be made water tight. In instances in which a reduction in casing diameter is made, there shall be enough overlap of the casings to prevent misalignment and to insure the making of an adequate seal in the annular space between casings to prevent the movement of unstable sediment or formation material into the well, in addition to preventing the degradation of the water supply by the migration of inferior quality water through the annular space between the two casings.

7.3.1 Steel Casing.

All steel casing shall be screw-coupled or welded. If the joints are welded, the weld shall be at least as thick as the wall thickness of the casing and shall consist of at least two beads for the full circumference of the joint.

7.3.2 Plastic Casing.

All plastic well casing shall be mechanically screw coupled, chemically welded, cam-locked or lug coupled to provide water

tight joints as per ANSI/ASTM F480-94 standards. Metal screws driven into casing joints shall not be long enough to penetrate the inside surface of the casing. Metal screws should be used only when surrounding air temperatures are below 50 degrees Fahrenheit (F) which retards the normal setting of the cement.

7.4 Mineralized, Contaminated or Polluted Water.

Whenever a water bearing stratum that contains nonpotable mineralized, contaminated or polluted water is encountered, the stratum shall be adequately sealed off so that contamination or commingling of the overlying or underlying groundwater zones will not occur.

7.5 Explosives.

Explosives used in well construction shall not be detonated within the section of casing designed or expected to serve as the surface seal of the completed well, whether or not the surface seal has been placed.

7.6 Well Site Locations.

Well site locations are described by course and distance from outside section corners or quarter corners on all state engineer authorizations to drill. However, the licensee should also be familiar with local zoning ordinances, or county boards of health requirements which may limit or restrict the actual well location in relationship to existing or proposed concentrated sources of pollution or contamination such as septic tanks, drain fields, sewer lines, stock corrals, feed lots, etc.

7.7 Chlorination of Water.

No contaminated or untreated water shall be placed in a well during construction. Water should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to give 100 parts per million free chlorine residual. Table 3, dated December 15, 1994, which is incorporated by reference to these rules, gives the amount of common laundry bleach or dry powder hyperchlorite required per 100 gallons of water or 100 feet linear casing volume of water to mix a 100 parts per million solution. Additional recommendations and guidelines for water well system disinfection are available from the state engineer upon request.

TABLE 3
AMOUNT OF HYPERCHLORITE FOR EACH 100 FEET OF WATER
STANDING IN WELL (100 ppm solution)

Well Diameter (inches)	5.25% Solution (cups)*	25% Powder (ounces)	70% Powder (ounces)**
2	0.50	1.00	0.50
4	2.25	3.50	1.50
6	5.00	8.00	3.00
8	8.50	14.50	5.50
10	13.00	22.50	8.50
12	19.00	32.50	12.00
14	26.00	44.50	16.50
16	34.00	58.00	26.00
20	53.00	90.50	33.00
100 gal	3.50	5.50	2.00

NOTES:
* Common Laundry Bleach
** High Test Hyperchlorite

7.8 Access Port:

Every well shall be equipped with a usable access port so that the position of the water level, or pressure head, in the well can be measured at all times:

7.9 Protection of Aquifer:

The well driller shall take due care to protect the producing aquifer from clogging or contamination. Every effort shall be made to remove all substances and materials introduced into the aquifer or aquifers during well construction. "Substances and materials" shall mean all drilling fluids, filter cake, and any other organic or inorganic substances added to the drilling fluid that may seal or clog the aquifer. The introduction of lost circulation materials (LCM's) during the drilling process shall be limited to those products which will not present a potential medium for bacterial growth or contamination. Only LCM's which are non-organic and biodegradable, such as "rock wool" consisting of spun calcium carbonate, which can be safely broken down and removed from the borehole, may be utilized. This is especially important in the construction of wells designed to be used as a public water system supply:

7.10 Containment of Drilling Fluid:

Drilling or circulating fluid introduced into the drilling process shall be contained in a manner to prevent surface or subsurface contamination and to prevent degradation of natural or man-made water courses or impoundments:

7.11 Completion or Abandonment:

A licensed driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravel packs or curbs required. Upon completion, all wells shall be equipped with a water-tight, tamper-resistant casing cap or sanitary seal. Abandonment of a well shall be in compliance with Section R655-4-12:

7.12 Replacement Wells:

Whenever a licensee is contracted to replace an existing well under state engineer's approval, it shall be the responsibility of the licensee to contract with the well owner to insure the old well is permanently abandoned in accordance with the provisions called for in Section R655-4-12 through Section R655-4-12.12. The abandonment procedures, materials used and the relative location of the new well shall be submitted by the licensee as part of the official well drillers report (well log) under the approved replacement well application. The permanent abandonment of the old well shall be completed before the rig is removed from the site of the newly constructed replacement well:

R655-4-8. Drilled Wells:

Drilled wells shall be drilled in compliance with the following standards. Bored, jetted, or driven wells shall be considered to be drilled wells for purposes of these rules:

8.1 Well Casing:

All well casing installed shall meet the minimum standards given in Sections R655-4-7.2.1, R655-4-7.2.2 and R655-4-7.2.3. Plastic casing is not recommended for use in wells drilled by the cable tool method:

8.2 Sealing of Casing:

All drilled wells shall have a surface seal installed in accordance with the provisions of Table 4 dated December 15, 1994, which are incorporated by reference to these rules. Neat cement grout, sand cement grout, bentonite or clay slurry may be

used in the surface seal. All grout placed deeper than 30 feet or under water shall be placed by tremie line, pumping, or pressure. Portland Cement grouts must be allowed to cure a minimum of 72 hours for Type I-II cement or 36 hours for Type III cement before construction or pump testing may be resumed:

8.2.1 Non-perforated Casing:

Non-perforated casing shall be installed to the minimum depths given in Table 4, dated December 15, 1994, which is incorporated by reference to these rules. A perforated liner, well screen, or smaller casing may be installed below the well casing, if necessary, to complete the well. The annular space between the two casings shall be sealed water-tight with grout, expansive clay, or a mechanical packer. Figures 1, 2, 3, and 4, dated December 15, 1994, which are incorporated by reference to these rules, illustrate typical well completions in the various formations listed in Table 4:

TABLE 4
CASING GROUTING TABLE

Overburden	Minimum Grouting Depth	Minimum Non-Perforated Casing Depth
Unconsolidated, Permeable Formations	10 Feet to Surface	Below Lowest Pumping Level
Clay or Stratified Deposits of Sand, Gravel, and Clay	18 Feet to Surface and Driven 5 Feet Into an Impervious Clay Layer	Top of the Uppermost Producing Zone
Consolidated Rock	10 Feet to Surface and Grouted 5 Feet Into a Rock Formation	10 Feet or 5 Feet Into the Rock Formation

8.3 Pitless Adaptor/Pitless Unit:

Devices designed for the attachment to openings in the water well casing, providing a sanitary connection for supply lines or pipes, which prevent entrance of contaminants from surface or near surface sources through such openings into the well or potable water supply may be installed in accordance with manufacturers recommendations. Such devices protect the water and distribution lines from temperature extremes, permit termination of the casing above ground as required in Section R655-4-7.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth:

8.4 Gravel Packed Wells:

8.4.1 Oversize Borehole:

The diameter of the borehole shall be at least four inches larger than the outside diameter of the casing to be installed to allow for proper placement of the gravel pack and adequate clearance for tremie pipe for grouting and surface seal installations as shown in figure 4. In order to accept a smaller diameter casing, any oversized borehole penetrating unconsolidated or stratified formations, the annular space must be sealed in accordance with Section R655-4-8.2 from the static water level back to ground surface, or from a point five feet into an impervious strata overlying the water producing zones back to the surface:

8.4.2 Filter Material:

The filter material shall consist of clean, well rounded grains that are smooth and uniform. The filter material should not contain

more than 2% by weight of thin, flat, or elongated pieces and should not contain organic impurities or contaminants of any kind. In order to assure that no contamination is introduced into the well, the gravel pack must be washed with a minimum 100 ppm solution of chlorinated water as listed in Table 3 or dry hyperchlorite mixed with the gravel pack at the surface before it is introduced into the well.

— 8.4.3 Placement of Filter Material:

All filter material shall be placed using a method that through common usage has been shown to minimize 1) bridging of the material between the borehole and the casing, and 2) excessive segregation of the material after it has been introduced into the annulus and before it settles into place:

— 8.4.4 No Surface Casing Used:

If no permanent surface casing is installed, a cement grout, bentonite, or clay slurry seal shall be installed to at least 5 feet into a clay layer or other tight formation overlying the producing zone. The well seal shall extend down at least 18 feet from the land surface:

— 8.4.5 Surface Casing Used:

If permanent surface casing is installed, it shall be unperforated and installed in accordance with Table 4, dated December 15, 1994, which is incorporated by reference to these rules. After the gravel pack has been installed, the inner casing may be sealed by either welding a water-tight steel cap between the two casings at land surface or filling the annular space between the two casings with cement grout, bentonite, or clay slurry from 18 feet to the surface:

— 8.5 Special Additional Standards for Artesian Wells

— 8.5.1 Sealing of Casing:

Unperforated well casing shall extend into the confining stratum overlying the artesian zone, and shall be adequately sealed into the confining stratum to prevent both surface and subsurface leakage from the artesian zone:

— 8.5.2 Elimination of Leakage:

If leaks occur around the well casing or adjacent to the well, the well shall be completed with the seals, packers, or casing necessary to eliminate the leakage:

— 8.5.3 Control Valves:

If a well flows, it shall be equipped with a suitable control valve. The control valve, must be available for inspection by the state engineer at all times:

R655-4-9. Deepening or Renovation of Wells.

— 9.1 Sealing of Casing:

If in the repair of a drilled well, the old casing is withdrawn, the well shall be recased in accordance with the rules provided in Section R655-4-8:

— 9.2 Inner Casing:

If an inner casing is installed to prevent leakage of undesirable water into a well, the space between the two well casings shall be completely sealed using packers, casing swedging, pressure grouting, etc., to prevent the movement of water between the casings:

— 9.3 Outer Casing:

If the "over-drive" method is used to eliminate leakage around an existing well, the casing driven over the well shall meet the minimum specifications listed in Section R655-4-7.2.1 and Table 4:

— 9.4 Artesian Well:

If upon deepening an existing well, an artesian zone is encountered, the well shall be cased and completed as provided in Section R655-4-8.5.1:

— 9.5 Drilling in a Dug Well:

A drilled well may be constructed through an existing dug well provided that:

— 9.5.1 An unperforated section of well casing extends from a depth of at least ten feet below the bottom of the dug well and at least 20 feet below land surface to above the maximum static water level in the dug well, and

— 9.5.2 A two foot thick seal of concrete, or clay slurry is placed in the bottom of the dug well so as to prevent the direct movement of water from the dug well into the drilled well, and

— 9.5.3 The drilled well shall be pumped or bailed to determine whether the seal described in R655-4-9.5.2 is adequate to prevent movement of water from the dug well into the drilled well. If the seal leaks, additional sealing and testing shall be performed until a water tight seal is obtained:

R655-4-10. Special Standards for Particular Wells:

— 10.1 Unusual Conditions:

If unusual conditions occur at a well site and compliance with these rules and standards will not result in a satisfactory well or protection to the groundwater supply, a licensed water well driller shall request that special standards be prescribed for a particular well. The request for special standards shall be in writing and shall set forth the location of the well, the name of the owner, the unusual conditions existing at the well site, the reasons that compliance with the rules and minimum standards will not result in a satisfactory well, and the proposed standards that the licensed water well driller believes will be more adequate for this particular well. If the state engineer finds that the proposed changes are in the best interest of the public, he will approve the proposed changes by assigning special standards for the particular well under consideration:

— 10.2 Special Standards:

If in the course of investigating the groundwater resources of Utah, the state engineer finds that special standards are required for the development of groundwater from any particular groundwater reservoir or area, special standards for the construction and maintenance of wells may be prescribed:

— 10.2.1 Special Water Well Casing Standards for the 71, 73, 75, and 77 Drainage Areas:

— 10.2.1.1 During the course of his investigations of groundwater in the previously mentioned drainages, the state engineer has found that a variance in water well casing wall thicknesses is warranted. This special standard shall apply only in those specific areas defined in Section R655-4-10.2.1.5. The casing specifications adopted in Section R655-4-7.2.1 and Section R655-4-7.2.2 shall govern in all other parts of the affected drainage areas:

— 10.2.1.2 It shall be the sole responsibility of the water well driller to install casing suitable to the conditions encountered at the well site, in accordance with these minimum specifications:

— 10.2.1.3 Steel Casing. All steel casing installed under this section shall be new or in like-new condition free from pits or breaks and shall meet the minimum specifications listed in Table 5, dated December 15, 1994, which is incorporated by reference to these rules:

TABLE 5
WALL THICKNESS FOR STEEL WATER WELL PIPE

Nominal Casing Diameter (Inches)	Minimum Wall Thickness (Inches)
4	0.188
6	0.188
8	0.188
10	0.250
12	0.250
14	0.250
16	0.250
18	0.250
20	0.250

10.2.1.4 Casing Joints:
All casing joints shall be made in conformance to Sections R655-4-7.3, R655-4-7.3.1, and R655-4-7.3.2.

10.2.1.5 Applicable Areas:
This special standard shall apply only in the specific hydrologic drainage areas listed below. 71 Area: Those parts of the 71 drainage area in Washington, Iron, and Beaver Counties below an elevation of 6,000 ft. Mean Sea Level (MSL). 73 Area, and 75 Area: Those parts of the 73 and 75 drainage areas in Iron County below an elevation of 6,000 ft. MSL. 77 Area: Those parts of the 77 drainage area in Beaver County below an elevation of 6,000 ft. MSL.

R655-4-11. Drilling of Monitor Wells:

11.0 General:
All monitor wells in the state constructed to a depth of 30 feet or greater below natural ground surface shall be installed by a currently licensed well driller.

11.1 Approval:
Approval to drill monitor wells is issued by the state engineer following review of written requests from the owner or applicant, federal or state agency or engineering representative. The requests for approval shall be made on forms provided by the state engineer and shall include the following information:

- 1) General location or common description of the monitoring project.
- 2) Specific course and distance locations from established government surveyed outside section corners or quarter corners or location by 1/4, 1/4 section.
- 3) Total anticipated number of wells to be installed.
- 4) Diameters, approximate depths and materials used in the wells.
- 5) Projected start and completion dates.
- 6) Name and license number of the driller contracted to install the wells.

11.2 Start Card/Official Well Drillers Report:
Upon written approval by the state engineer the project will be assigned an approved authorization number which will be referenced by the licensed driller on all intention to drill (start) cards and official well drillers reports as required in Section R655-4.1.1 and Section R655-4.3.

11.3 Installation and Construction:
11.3.1 All material used in the installation of monitor wells shall be sterile and contaminant free when placed in the ground.

During construction contaminated water should not be allowed to enter contaminant-free geologic formations or water bearing zones.

11.3.2 Some minor cross-contamination may occur during the drilling process, but the integrity of the borehole and individual formations must then be safeguarded.

11.3.3 The well casing should be perforated or screened and filter packed with sand or gravel where necessary to provide adequate sample collection at depths where appropriate aquifer flow zones exist. The annular space between the borehole and casing should be adequately sealed using bentonite-slurry, pellets, granules or chips, cement grout or neat cement.

11.3.4 The gravel or filter pack should generally extend two feet to ten feet above screened or perforated areas to prevent the migration of the sealing material from entering the zones being sampled. Drill cutting should not be placed into the open borehole annulus. Figure 6, dated December 15, 1994 refers to typical groundwater monitor well construction standards and is incorporated by reference to these rules.

11.4 Abandonment:
Abandonment of monitor wells shall be completed in compliance with the provisions of Sections R655-4-12.1 through R655-4-12.12. The provisions of subsection R655-4-12.4(4) are not required for the permanent abandonment of monitor wells or wells completed less than 30 feet below natural ground surface.

11.5 Summary:
Most monitor well projects are the result of compliance with the Environmental Protection Agency (EPA), Federal Regulations such as the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), or specific State Solid and Hazardous Waste requirements. The contracts governing their installation are tightly written containing specific requirements as to site location, materials used, sampling procedures and overall objectives. Therefore specific construction requirements for monitor well installation shall be governed by applicable contracts and regulations providing they meet or exceed state requirements and specifications. Guidelines and recommended practices dealing with the installation of monitor wells may be obtained from the state engineer upon request. Additional recommended information may be obtained from the Environmental Protection Agency (EPA), Resource Conservation and Recovery Act (RCRA), Groundwater Monitoring Enforcement and Compliance Document available from EPA's regional office in Denver, Colorado and from the Handbook of Suggested Practices for the Design and Installation of Groundwater Monitoring Wells, available from the National Groundwater Association in Dublin, Ohio.

R655-4-12. Abandonment of Wells:

12.1 Temporary Abandonment:
When any well is temporarily removed from service, the top of the well shall be sealed with a tamper resistant, water-tight cap or seal. If the well is temporarily abandoned during construction, it shall be assumed that the well is permanently abandoned after 90 days and an official report of well driller (well log) must be submitted in compliance with Section R655-4.4.3.

12.2 Permanent Abandonment:
Any well that is to be permanently abandoned shall be completely filled in a manner to prevent vertical movement of water within the borehole as well as preventing the annular space

surrounding the well casing from becoming a conduit for possible contamination of the groundwater supply:

— 12.3 License Required:

Well abandonment shall be accomplished under the direct supervision of a currently licensed water well driller who shall be responsible for verification of the procedures and materials used:

— 12.4 Materials Used:

The following materials may be used in the permanent abandonment of wells:

— 1) Neat Cement conforming to ASTM standard C150-94 (standard specification for Portland Cement) of sufficient weight of not less than 15 lbs/gallon to prevent the flow of any water into the borehole from any aquifer penetrated:

— 2) Cement grout consisting of equal parts of cement conforming to ASTM standard C150 and sand or aggregate with no more than 6 gallons of water per 94 pound sack of cement:

— 3) Bentonite-based, commercially produced products specifically designed for permanent well abandonment, which are mixed and placed according to manufacturer's recommended procedures (i.e. Plug-Gel, Shur-Gel, Benseal, etc.):

— 4) The uppermost ten feet of the abandoned well casing or borehole shall consist of neat cement as required in Subsection R655-4-12.4(1) or cement grout as required in Subsection R655-4-12.4(2):

— 5) The liquid phase of the abandonment fluid shall be non-saline water containing no chemicals or toxic materials or other substances which may decompose or possibly contaminate the groundwater supply:

— 6) Abandonment materials placed opposite any nonwater bearing intervals or zones shall be at least as impervious as the formation or strata prior to penetration during the drilling process:

— 12.5 Placement of Materials:

— 1) Neat cement and cement grout shall be introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the well. The sealing material shall be placed by the use of a grout pipe, tremie line or dump bailer in order to avoid segregation or dilution of the materials:

— 2) Bentonite-based abandonment products shall be mixed and placed according to manufacturer's recommended procedures:

— 12.6 Termination of Casing:

The casings of wells to be abandoned shall be severed a minimum of two feet below either the natural ground surface adjacent to the well or at the collar of the hole, whichever is the lower elevation. A minimum of two feet of compacted native material shall be placed above the abandoned well upon completion:

— 12.7 Report of Abandonment:

Within 30 days of the completion of well abandonment procedures, a report must be submitted to the state engineer by the responsible licensed driller giving data relating to the abandonment of the well. The report shall be made on an official report of well driller (well log) forms furnished by the state engineer and shall contain information he may require, including the following:

— 1) Name of licensed driller or other person(s) performing the abandonment procedures:

— 2) Name of the well owner at time of abandonment:

— 3) Local address or location of well by section, township and range:

— 4) Abandonment materials, equipment and procedures used:

— 5) Water right or authorization number covering the well:

— 6) Final disposition of the well:

— 7) Date of completion:

— 12.8 Abandonment of Artesian Wells:

A neat cement, cement grout or concrete plug shall be placed in the confining stratum overlying the artesian zone so as to prevent subsurface leakage from the artesian zone. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2):

— 12.9 Abandonment of Drilled and Jetted Wells:

A cement grout, neat cement or concrete plug shall be placed opposite all perforations, screens or openings in the well casing. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2):

— 12.10 Abandonment of Gravel Packed Wells:

All gravel packed wells shall be pressure grouted throughout the perforated or screened section of the well. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2):

— 12.11 Removal of Casing:

It is desirable to remove the well casing during well abandonment, and when doing so the abandonment materials shall be placed from the bottom of the well or borehole progressively upward as the casing is removed. The well shall be sealed with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. In the case of gravel packed wells, the entire gravel section shall be pressure grouted. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2):

— 12.12 Replacement Wells:

Wells which are to be removed from operation and replaced by the drilling of a new well, under an approved replacement application, shall be abandoned in a manner consistent with the provisions of Subsections R655-4-12.1 through R655-4-12.12 before the rig is removed from the site of the newly constructed replacement well. Also refer to the requirements provided in Subsection R655-4-7.12:

R655-4-13. Wells Intended for Public Water Systems Supply:

— 13.1 DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF DRINKING WATER REQUIREMENTS. Each driller shall be familiar with the requirements of the Department of Environmental Quality, Division of Drinking Water with respect to public water system supply wells. Rules governing public water system supply wells are given in "Section R309, "Drinking Water Source Protection Rule" available from the Department of Environmental Quality (DEQ), Division of Drinking Water (DDW), PO Box 144830, 150 North 1950 West, Salt Lake City, Utah 84114-4830:

— When drilling wells intended for public water system supply use, the driller should be familiar with and acquaint his client with local board of health or state DEQ, DDW rules which require among other things:

— a) ~~Written specifications governing the well drilling; procedures, practices and materials to be used in the construction of the well and placement of the grout seal; and methods for development, cleaning, disinfection, and testing of the well;~~

— b) ~~A location map showing land ownership surrounding the proposed well site; and~~

— c) ~~A Preliminary Evaluation Report as described in Subsection R309-113-13(2), which may require the additional services of a hydro-geologist, but must involve the public water system management for which the well will provide water.~~

— 13.2 Inspection and Certification of Grout Seal.

— A representative of the Department of Environmental Quality, Division of Drinking Water must be present at the time the surface grout seal is placed in all public water system supply wells, so that the placement of the seal can be certified. In order to assure that a representative will be available, and to avoid down-time waiting for a representative, notice should be given several days in advance of the projected surface grout seal placement. When the time and date for the surface grout seal installation are confirmed a definite appointment should be made with the representative of DEQ/DDW to witness the grout seal installation by calling (801) 536-4200. The licensed driller shall have available a copy of the start card relating to the well and provide that information to the inspecting representative of DEQ/DDW at the time of the surface grout seal installation and inspection.

KEY: water rights, licensing, well drilling

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	73-3-25
	73-3-26]

R655-4. Water Well Drillers.

R655-4-1. Purpose, Scope, and Exclusions.

1.1 Purpose. These rules are promulgated pursuant to Section 73-3-25. The purpose of these rules is to assist in the orderly development of underground water; insure that minimum construction standards are followed in the drilling, deepening, repairing, cleaning, and abandonment of water wells; prevent pollution of aquifers within the state; prevent wasting of water from flowing wells; obtain accurate records of well construction operations; and insure compliance with the state engineer's authority for appropriating water.

All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by R655-6 "Administrative Procedures for Informal Proceedings Before the Division of Water Rights".

1.2 Scope. The construction, deepening, repair, replacement, cleaning, or abandonment of the following types of wells is regulated by these administrative rules and the work must be completed by a licensed well driller. The process for an applicant to obtain approval to construct, or replace the wells listed below in 1.2.1, 1.2.2, or 1.2.3 is outlined in Section R655-4-7 of these rules. The process for an applicant to obtain approval to construct, deepen, repair, clean, or replace the wells listed below in 1.2.4, 1.2.5, or 1.2.6 is outlined in Appendix 1.

1.2.1 Cathodic protection wells.

1.2.2 Heating or cooling exchange wells which are 30 feet or greater in depth and which encounter formations containing

groundwater. If a separate well or borehole is required for re-injection purposes, it must also comply with these administrative rules.

1.2.3 Monitor wells which are completed to a depth of 30 feet of greater.

1.2.4 Private water production wells which are completed to a depth of 30 feet of greater.

1.2.5 Public water system supply wells.

1.2.6 Recharge and recovery wells which are drilled under the provisions of Title 73, Chapter 3b "Groundwater Recharge and Recovery Act" Utah Code Annotated.

1.3 Exclusions. The construction, repair, replacement, or abandonment of the following types of wells or boreholes are excluded from regulation under these administrative rules:

1.3.1 Any cathodic protection wells, heating or cooling exchange wells, monitor wells and water production wells that are constructed to a final depth of less than 30 feet. However, diversion and beneficial use of groundwater from wells less than 30 feet deep shall require approval through the appropriation procedures and policies of the state engineer and Title 73, Chapter 3 of the Utah Code Annotated.

1.3.2 Geothermal wells. However geothermal wells are subject to Section 73-22-1 "Utah Geothermal Resource Conservation Act" Utah Code Annotated and the rules promulgated by the state engineer.

1.3.3 Temporary exploratory wells drilled to obtain information on the subsurface strata on which an embankment or foundation is to be placed or an area proposed to be used as a potential source of material for construction.

1.3.4 Wells or boreholes constructed to monitor man-made structures, house instrumentation to monitor structural performance, or dissipate hydraulic pressures on structures provided the wells or boreholes do not interfere with established aquifers or their primary purpose is not for monitoring water quality.

1.3.5 Wells or boreholes drilled or constructed into non-water bearing zones or which are less than 30 feet in depth for the purpose of utilizing heat from the surrounding earth.

1.3.6 Geotechnical borings drilled for Preliminary Site Assessment (PSA) or to obtain lithologic data which are not installed for the purpose of utilizing or monitoring groundwater.

R655-4-2. Definitions.

ABANDONED WELL - any well which is not in use and has been filled or plugged so that it is rendered unproductive and will prevent contamination of groundwater. A properly abandoned well will not produce water nor serve as a channel for movement of water from the well or between water bearing zones.

AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) - a nationally recognized testing laboratory that certifies building products and adopts standards including those for steel and plastic (PVC) casing utilized in the well drilling industry. ANSI standards are often adopted for use by ASTM and AWWA. Current information on standards can be obtained from: ANSI, 1430 Broadway, New York, NY 10018.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) - an independent organization concerned with the development of standards on characteristics and performance of materials, products and systems including those utilized in the well

drilling industry. Information may be obtained from: ASTM, 1916 Race Street, Philadelphia, PA 19013.

AMERICAN WATER WORKS ASSOCIATION (AWWA) - an international association which publishes standards intended to represent a consensus of the water supply industry that the product or procedure described in the standard will provide satisfactory service or results. Information may be obtained from: AWWA, 6666 West Quincy Avenue, Denver CO 80235.

ANNULAR SPACE - the space between the inner well casing and the outer well casing or borehole.

APPRENTICE - an apprentice drill rig operator is an individual who is employed by a licensed Utah Water Well Driller; who works under the direct supervision of the licensee or a drill rig operator; who assists with, but never has responsible charge for the construction of water wells; and who uses equipment that is under the direct control of the licensee.

AQUIFER - a porous underground formation yielding with drawable water.

ARTESIAN AQUIFER - a water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

ARTESIAN WELL - a well where the water level rises appreciably above the zone of saturation.

BENTONITE - a highly plastic, highly absorbent, colloidal swelling clay composed largely of mineral sodium montmorillonite. Bentonite is commercially available in powdered, granular, pellet, or chip form which is hydrated with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, well abandonment, and to provide a seal in the annular space between the well casing and borehole wall.

BENTONITE GROUT - a mixture of bentonite and potable water specifically designed to seal and plug wells and boreholes mixed at manufacturer's specifications to a grout consistency which can be pumped through a pipe directly into the annular space of a well or used for abandonment. Its primary purpose is to seal the borehole or well in order to prevent the subsurface migration or communication of fluids.

CASING - a tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

CATHODIC PROTECTION WELL - a well constructed for the purpose of installing deep anodes to minimize or prevent electrolytic corrosive action of metallic structures installed below ground surface, such as pipelines, transmission lines, well casings, storage tanks, or pilings.

CONFINING UNIT - a geological layer either of unconsolidated material, usually clay or hardpan, or bedrock, usually shale, through which virtually no water moves.

CONSOLIDATED FORMATION - bedrock consisting of sedimentary, igneous, or metamorphic rock (e.g. shale, sandstone, limestone, quartzite, conglomerate, basalt, granite, tuff, etc.).

DISINFECTION - or disinfecting is the use of chlorine or other disinfecting agent or process approved by the state engineer, in sufficient concentration and contact time adequate to inactivate coliform or other organisms.

DRAWDOWN - the difference in elevation between the static and pumping water levels.

DRILL RIG - any power-driven percussion, rotary, boring, coring, digging, jetting, or augering machine used in the construction of a well or borehole.

EMERGENCY SITUATION - any situation where immediate action is required to protect life or property. Emergency status would also extend to any situation where life is not immediately threatened but action is needed immediately and it is not possible to contact the state engineer for approval. For example, it would be considered an emergency if a domestic well needed immediate repair over a weekend when the state engineer's offices are closed.

GRAVEL PACKED WELL - a well in which filter material is placed in the annular space to increase the effective diameter of the well and to prevent fine-grained sediments from entering the well.

GROUNDWATER - subsurface water in a zone of saturation.

GROUT - a fluid mixture of Portland cement or bentonite with water of a consistency that can be forced through a pipe and placed as required. Various additives, of sand, bentonite, and hydrated lime, may be included in the mixture to meet different requirements.

HYDRAULIC FRACTURING - the process whereby water or other fluid is pumped under high pressure into a well to fracture and clean-out the reservoir rock surrounding the well bore thus increasing the flow to the well.

MONITOR WELL - a well as defined in Subsection R655-4-2(2.8) that is constructed for the purpose of determining water levels, monitoring chemical, bacteriological, radiological, or other physical properties of ground water or vadose zone water.

NATIONAL SANITATION FOUNDATION (NSF) - a voluntary third party consensus standards and testing entity established under agreement with the U. S. Environmental Protection Agency (EPA) to develop testing and adopt standards and certification programs for all direct and indirect drinking water additives and products. Information may be obtained from: NSF, 3475 Plymouth Road, P O Box 1468, Ann Arbor, Michigan 48106.

NEAT CEMENT GROUT - cement conforming to the American Society for testing and Materials (ASTM) Standard C150 (standard specification of Portland cement), with no more than six (6) gallons of water per 94 pound sack (one cubic foot) of cement of sufficient weight of not less than 15 lbs/gallon.

OPERATOR - a drill rig operator is an individual who works under the direct supervision of a licensed Utah Water Well Driller and who can be left in responsible charge to construct water wells using equipment that is under the direct control of the licensee.

PITLESS ADAPTER OR UNIT - an assembly of parts designed for attachment to a well casing which allows buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing contaminants from entering the well. Such devices protect the water and distribution lines from temperature extremes, permit termination of the casing above ground as required in Subsection R655-4-8(8.2) and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth.

POLLUTION - the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

POTABLE WATER - water supplied for human consumption, sanitary use, or for the preparation of food or pharmaceutical products which is free from biological, chemical, physical, and radiological impurities.

PRESSURE GROUTING - a process by which grout is confined within the drillhole or casing by the use of retaining plugs in packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

PRIVATE WATER PRODUCTION WELL - a privately owned well constructed to supply water for any purpose which has been approved by the state engineer (such as irrigation, stockwater, domestic, etc.).

PROVISIONAL WELL - authorization granted by the state engineer to drill under a pending, unapproved water right or exchange; or for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source.

PUBLIC WATER SYSTEM SUPPLY WELL - a well, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.

PUMPING LEVEL - the elevation of the surface of the water in a well after a period of pumping at a given rate.

SAND - a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

SAND CEMENT GROUT - a grout consisting of equal parts of cement conforming to ASTM standard C150 and sand/aggregate with no more than six (6) gallons of water per 94 pound sack (one cubic foot) of cement.

STANDARD DIMENSION RATIO (SDR) - the ratio of average outside pipe diameter to minimum pipe wall thickness.

STATE ENGINEER - the director of the Utah Division of Water Rights or any employee of the Division of Water Rights designated by the state engineer to act in administering these rules.

STATIC LEVEL - stabilized water level in a nonpumped well beyond the area of influence of any pumping well.

TREMIE PIPE - a device that carries materials to a designated depth in a drill hole or annular space.

UNCONSOLIDATED FORMATION - loose, soft, incoherent rock material composed of sedimentary, igneous, or metamorphic rock which includes sand, gravel, and mixtures of sand and gravel. These formations are widely distributed and can possess good storage and water transmissivity characteristics.

UNHYDRATED BENTONITE - dry bentonite consisting primarily of granules, tablets, pellets, or chips that may be placed in a well or borehole in the dry state and hydrated in place by either formation water or by the addition of potable water into the well or borehole containing the dry bentonite. Unhydrated bentonite can be used for sealing and abandonment of wells.

VADOSE ZONE - the zone containing water under less than atmospheric pressure, including soil water, intermediate vadose water and capillary water. The zone extends from land surface to the zone of saturation or water table.

WELL - a horizontal or vertical excavation or opening into the ground made by digging, boring, drilling, jetting, augering, or driving or any other artificial method for utilizing or monitoring underground waters.

WELL DRILLER - any person who is licensed by the state engineer to construct water wells for compensation or otherwise.

The licensed driller has total responsibility for the construction work in progress at the well drilling site.

WELL DRILLING - the act of constructing, repairing, renovating, or deepening a well, including all incidental work.

R655-4-3. Licenses and Registrations.

3.1 General.

3.1.1 Section 73-3-25 of the Utah Code requires every person that constructs a well in the state to obtain a license from the state engineer. All licenses, registrations, and listings expire at 12 midnight on December 31 of the year in which they are issued and are not transferable.

3.1.2 Any person found to be drilling a well without a valid well driller's license or operator's registration will be ordered to cease drilling by the state engineer. The order may be made verbally but must also be followed by a written order. The order may be posted at an unattended well drilling site. A person found drilling without a license will be prosecuted under Section 73-3-26 of the Utah Code annotated, 1953 (see Subsection R655-4-5(5.8)).

3.2 Well Driller's License. An applicant must meet the following requirements to become licensed as a Utah Water Well Driller:

3.2.1 Applicants must be 21 years of age or older.

3.2.2 Complete and submit the application form provided by the state engineer.

3.2.3 Pay the application fee approved by the state legislature.

3.2.4 Provide documentation of at least two (2) years of full time prior water well drilling experience OR documentation of 15 wells constructed by the applicant under the supervision of a licensed well driller. A copy of the well log for each well constructed must be included. The documentation must also show the applicant's experience with each type of drilling rig to be listed on the license. Acceptable documentation will include registration with the Division of Water Rights, letters from licensed well drillers (Utah or other states), or a water well drilling license granted by another state, etc.

Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, 12 months of drilling experience, and for up to, but not exceeding, five (5) of the required drilled wells. The state engineer will determine the number of months of drilling experience and the number of drilled wells that will be credited for the classroom study.

3.2.5 File a bond in the sum of \$5,000 with the Division of Water Rights which is conditioned upon proper compliance with the law and these rules and which is effective for the calendar year in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer".

3.2.6 Obtain a score of at least 70% on each of the written licensing examinations required and administered by the state engineer. The required examinations test the applicant's knowledge of:

a. The Administrative Rules for Water Well Drillers and Utah water law as it pertains to underground water;

b. The minimum construction standards established by the state engineer for water well construction;

c. Geologic formations and proper names used in describing underground material types;

d. Reading maps and locating points from descriptions based on section, township, and range;

e. Groundwater geology and the occurrence and movement of groundwater;

f. The proper operating procedures and construction methods associated with the various types of water well drilling rigs. (A separate test is required for each type of water well drilling rig to be listed on the license).

3.2.7 Demonstrate proficiency in resolving problem situations that might be encountered during the construction of a water well by passing an oral examination administered by the state engineer.

3.3 Drill Rig Operator's Registration. An applicant must meet the following requirements to become registered as a drill rig operator:

3.3.1 Applicants must be 18 years of age or older.

3.3.2 Complete and submit the application form provided by the state engineer.

3.3.3 Pay the application fee approved by the state legislature.

3.3.4 Provide documentation of at least six (6) months of prior water well drilling experience. The documentation must show the applicant's experience with each type of drilling rig to be listed on the registration. Acceptable documentation will include being listed as an apprentice with the Division of Water Rights, letters from licensed well drillers, or registration as an operator in another state.

3.3.5 Obtain a score of at least 70% on a written examination of the minimum construction standards established by the state engineer for water well construction. The test will be provided to the licensed well driller by the state engineer. The licensed well driller will administer the test to the prospective operator and return it to the state engineer for scoring.

3.4 Apprenticeship Listing. An applicant must meet the following requirements to become listed as an apprentice drill rig operator:

3.4.1 Applicants must be 18 years of age or older.

3.4.2 Complete and submit the application form provided by the state engineer.

3.5 The state engineer may issue a restricted, conditional, or limited license to an applicant based on prior drilling experience.

3.6 The state engineer may, upon investigation and after a hearing, refuse to issue a license or a registration to an applicant if it appears the applicant has not had sufficient training or experience to qualify as a competent well driller or operator.

R655-4-4. Administrative Requirements and General Procedures.

4.1 Authorization to Drill.

The well driller shall make certain that a valid authorization or approval to drill exists before beginning drilling or work on a well. A valid authorization to drill shall consist of any of the items listed below. Items 4.1.1 through 4.1.7 allow the applicant to contract with a well driller to drill, replace, renovate, or abandon exactly one well at each location listed on the approval form. Most start cards list the date when the authorization to drill expires. If the expiration date has passed, the start card is no longer valid. If there is no expiration date on the start card, the driller must contact the state engineer's office to determine if the authorization to drill is still valid. When the work is completed, the permission to drill is terminated.

4.1.1 An approved application to appropriate.

4.1.2 A provisional well approval letter.

An approved provisional well letter grants authority to drill but allows only enough water to be diverted to determine the characteristics of an aquifer or the existence of a useable groundwater source.

4.1.3 An approved permanent change application.

4.1.4 An approved exchange application.

4.1.5 An approved temporary change application.

4.1.6 An approved application to renovate or deepen an existing well.

4.1.7 An approved application to replace an existing well.

4.1.8 An approved monitor well letter.

An approved monitor well letter grants authority to drill but allows only enough water to be diverted to monitor groundwater.

4.1.9 Any letter or document from the state engineer directing or authorizing a well to be drilled or work to be done on a well.

4.2 Start Cards.

4.2.1 Prior to commencing any work (other than abandonment, see 4.2.4) on any well governed by these administrative rules, the driller must notify the state engineer of that intention by transmitting the information on the "Start Card" to the state engineer by telephone, by facsimile (FAX), or by e-mail. A completed original Start Card OR a facsimile (FAX) of the Start Card must be sent to the state engineer by the driller.

4.2.2 A specific Start Card is printed for each well drilling approval and is furnished by the state engineer to the applicant or the well owner. The start card is preprinted with the water right number/provisional/monitor well number, owner name/address, and the approved location of the well. The state engineer marks the approved well drilling activity on the card. The driller must put the following information on the card:

a. The date on which work on the well will commence;

b. The projected completion date of the work;

c. The well driller's license number;

d. The well driller's signature.

4.2.3 When a single authorization is given to drill wells at more than one point of diversion, a start card shall be submitted for each location to be drilled.

4.2.4 A start card is not required to abandon a well. However, prior to commencing well abandonment work, the driller is required to notify the state engineer by telephone, by facsimile, or by e-mail of the proposed abandonment work. The notice must include the location of the well. The notice should also include the water right number associated with the well and the well owner if that information is available.

4.3 General Requirements During Construction.

4.3.1 The well driller shall have the required penal bond continually in effect during the term of the well driller's license.

4.3.2 The well driller's license number or the well driller's company name exactly as shown on the well drilling license must be prominently displayed on each well drilling rig operated under the well driller's license. If the well driller's company name is changed the well driller must immediately inform the state engineer of the change.

4.3.3 A licensed well driller or a registered operator must be at the well site whenever the following aspects of well construction are in process: advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well renovation or repair, or abandoning a well.

4.3.4 An operator who is left in responsible charge of advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well renovation or repair, or abandoning a well must have a working knowledge of the minimum construction standards and the proper operation of the drilling rig. The licensed well driller is responsible to ensure that an operator is adequately trained to meet these requirements. If, during a field inspection by the staff of the Division of Water Rights, it is determined that an operator in responsible charge does not meet these requirements, a state engineer's red tag (see paragraph 4.3.5 below) will be placed on the drilling rig and the drilling operation will be shut down. The order to cease work will remain effective until a qualified person is available to perform the work.

4.3.5 The state engineer or staff of the Division of Water Rights may order that work cease on the construction, repair, or abandonment of a well if a field inspection reveals that the construction does not meet the minimum construction standards to the extent that the public interest might be adversely affected. A cease work order may also be issued if the well driller is not licensed for the drilling method being used for the well construction. The state engineer's order will be in the form of a red tag which will be attached to the drilling rig. A letter from the state engineer will be sent to the licensed driller to explain the sections of the administrative rules which were violated. The letter will also explain the requirements that must be met before the order can be lifted.

4.3.6 When required by the state engineer, the well driller or registered operator shall take lithologic samples at the specified intervals and submit them in the bags provided by the state engineer.

4.3.7 A copy of the current Administrative Rules for Water Well Drillers should be available at each well construction site for review by the construction personnel.

4.4 Removing Drill Rig From Well Site.

4.4.1 A well driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravels packs, or curbs required.

4.4.2 For the purposes of these rules, the construction, repair or abandonment work on a well will be considered completed when the well driller removes his drilling rig from the well site.

4.4.3 The well driller may request a variance from the state engineer. The written request must indicate that the well has been temporarily abandoned as provided in Section R655-4-12 and must give the date when the well driller plans to continue work.

4.5 Official Well Driller's Report (Well Log).

4.5.1 Within 30 days of the completion of work on any well, the driller shall file an official well driller's report (well log) with the state engineer. The blank well log form will be mailed to the licensed well driller upon receipt of the information on the Start Card as described in Subsection R655-4-4(4.2).

4.5.2 The water right number/provisional/monitor well number, owner name/address, and the approved location of the well will be preprinted on the blank well log provided to the well driller. The driller is required to verify this information and make any necessary changes on the well log prior to submittal. The state engineer will mark the approved activity (e.g., new, replace, repair, deepen) on the well log. The driller must provide the following information on the well log:

- a. The start and completion date of work on the well;
- b. The nature of use for the well (e.g., domestic, irrigation, stock watering, commercial, municipal, provisional, monitor, cathodic protection, heat pump, etc.);
- c. The borehole diameter, depth interval, drilling method and drilling fluids utilized to drill the well;
- d. The lithologic log of the well based on strata samples taken from the borehole as drilling progresses;
- e. Static water level information to include date of measurement, static level, measurement method, reference point, artesian flow and pressure, and water temperature;
- f. The size, type, description, joint type, and depth intervals of casing, screen, and perforations;
- g. A description of the filter pack, surface and interval seal material, and packers used in the well along with necessary related information such as the depth interval, quantity, and mix ratio;
- h. A description of the finished wellhead configuration;
- i. The date and method of well development;
- j. The date, method, yield, drawdown, and elapsed time of a well yield test;
- k. A description of pumping equipment (if available);
- l. Other comments pertinent to the well activity completed;
- m. The well driller's statement to include the driller name, license number, signature, and date.

4.5.3 Accuracy and completeness of the submitted well log are required. Of particular importance is the lithologic section which should accurately reflect the geologic strata penetrated during the drilling process. Sample identification must be logged in the field as the borehole advances and the information transferred to the well log form for submission to the state engineer.

4.5.4 An amended well log shall be submitted by the licensed driller if it becomes known that the original report contained inaccurate or incorrect information, or if the original report requires supplemental data or information. Any amended well log must be accompanied by a written statement, signed and dated by the licensed well driller, attesting to the circumstances and the reasons for submitting the amended well log.

4.6 Official Well Abandonment Reports (Abandonment Logs).

4.6.1 Whenever a well driller is contracted to replace an existing well under state engineer's approval, it shall be the responsibility of the well driller to inform the well owner that it is required by law to permanently abandon the old well in accordance with the provisions of Section R655-4-12.

4.6.2 Within 30 days of the completion of abandonment work on any well, the driller shall file an abandonment log with the state engineer. The blank abandonment log will be mailed to the licensed well driller upon notice to the state engineer of commencement of abandonment work as described in Subsection R655-4-4(4.2.4).

4.6.3 The water right number/provisional/monitor well number, owner name/address, and the well location (if available), will be preprinted on the blank abandonment log provided to the well driller. The driller is required to verify this information and make any necessary changes on the abandonment log prior to submitting the log. The driller must provide the following information on the abandonment log:

- a. Existing well construction information;
- b. Date of abandonment;
- c. Reason for abandonment;
- d. A description of the abandonment method;

- e. A description of the abandonment materials including depth intervals, material type, quantity, and mix ratio;
- f. Replacement well information (if applicable);
- g. The well driller's statement to include the driller name, license number, signature, and date.

4.6.4 When a well is replaced and the well owner will not allow the driller to abandon the existing well, the driller must briefly explain the situation on the abandonment form and submit the form to the state engineer within 30 days of completion of the replacement well.

4.7 Incomplete or Incorrectly Completed Reports.

An incomplete well/abandonment log or a well/abandonment log that has not been completed correctly will be returned to the licensed well driller to be completed or corrected. The well log will not be considered filed with the state engineer until it is complete and correct.

4.8 Extensions of Time.

The well driller may request an extension of time for filing the well log if there are circumstances which prevent the driller from obtaining the necessary information before the expiration of the 30 days. The extension request must be submitted in writing before the end of the 30 day period.

R655-4-5. Infractions of the Administrative Requirements and the Minimum Construction Standards.

5.1 Licensed well drillers who commit the infractions listed below shall have assessed against their well drilling record the number of points assigned to the infraction.

TABLE 1

Infractions of Administrative Requirements

	Points
Start Cards	
Failure to properly notify the state engineer before the start of construction	20
Performing any well drilling activity without valid authorization (except in emergency situations)	100
Well Logs	
Intentionally making a material misstatement of fact in an official well driller's report or amended official well driller's report (well log)	100
Well log submitted late	10
Well Abandonment	
Well abandonment report submitted late	30
Licenses	
Intentionally making a material misstatement of fact in the application for a well driller's license	100
Well driller license or well driller name not clearly posted on well drilling rig	10
Failing to notify the state engineer in a timely manner of a change in the well driller's company name	10

Operators/Contract Drillers	
Employing an operator who is not registered with the state	75
Contracting out work to an unlicensed driller (using the unlicensed driller's rig) without prior written approval from the state	
	75

Infractions of Construction Standards/Conditions

	Points
Approvals	
Constructing a replacement well further than 150 ft from the original well without the authorization of an approved change application	50
Failing to comply with any conditions included on the well approval such as minimum or maximum depths, specified locations of perforations, etc.	50
Using a method of drilling not listed on the well driller's license	30
Performing any well construction activity in violation of a red tag cease work order	100
Casing	
Using or attempting to use sub-standard well casing	50
Using improper casing joints	40
Failure to extend well casing at least 18" above ground	30
Surface Seals	
Using improper procedures to install a surface seal	50
Using improper products to install a surface seal	50
Well Abandonment	
Using improper procedures to abandon a well	50
Using improper products to abandon a well	50
Construction Fluids	
Using water of unacceptable quality in the well drilling operation	40
Using improper circulation materials	30
Using an unacceptable mud pit	20
Filter Packs	
Failure to install filter pack properly	40
Failure to disinfect filter pack	30
Well Completion	
Failure to make well accessible to water level or pressure head measurements	30
Failure to install cap and valving to control artesian flow	30
Removing the well drilling rig from the well site before completing the well or temporarily or permanently abandoning the well	50
General	
Failure to securely cover an unattended well during construction	30

5.2 Points will be assessed against a driller's record upon verification by the state engineer that an infraction has occurred. Points will be assessed at the time the state engineer becomes aware of the infraction regardless of when the infraction occurred.

5.3 Well drillers may appeal each infraction in writing within 30 days of written notification by the state engineer.

5.4 When the number of points assessed against the well driller's record equals seventy-five (75) points, a warning letter will be sent to the well driller. The letter will notify the driller that if he continues to violate the administrative requirements or minimum construction standards contained in the Administrative Rules for Water Well Drillers, a hearing will be held to determine if his license should be suspended or revoked or the bond exacted. The letter will also describe the options available to the driller to delete points from the record as described in Subsection R655-4-5(5.10). A copy of the driller's infraction record will be included with the letter.

5.5 When the number of points assessed against the well driller's record equals 100, a hearing will be scheduled to consider whether the well driller's license should be suspended or revoked. The state engineer will determine the duration of the revocation or suspension period.

5.6 A hearing may also be convened as a result of a complaint filed by a well owner regardless of the total number of points shown on the well driller's record.

5.7 A well driller will be given ten (10) days notice, by registered mail, of any hearing which is scheduled to consider suspending or revoking the well driller's license or exacting the well driller's bond.

5.8 A well driller whose license has been revoked or suspended, will be prohibited from engaging in the well drilling business or operating well drilling equipment during the revocation or suspension period set by the state engineer.

5.9 After the suspension period has expired, the well driller will be notified by the state engineer that he/she may again engage in the well drilling business, however, there will be a probation period lasting until the total number of points on the well driller's infraction record is reduced through any of the options described in Subsection R655-4-5(5.10).

5.10 After the revocation period has expired, a well driller may make application for a new license as provided in Section R655-4-3.

5.11 Points assessed against a well driller's record will remain on the record unless deleted through any of the following options:

5.11.1 Points will be deleted three years after the date when the infraction is noted by the state engineer and the points are assessed against the driller's record.

5.11.2 One half the points on the record will be deleted if the well driller is free of infractions for an entire year.

5.11.3 Thirty (30) points will be deleted for obtaining six (6) hours of approved continuing education credits in addition to the credits required to renew the water well driller's license. A driller may exercise this option only once each year.

5.11.4 Twenty (20) points will be deleted for taking and passing (with a minimum score of 70%) the test covering the administrative requirements and the minimum construction standards. A driller may exercise this option only every other year.

5.12 If the state engineer determines, following an investigation and a hearing, that the licensee has failed to comply

with the Administrative Rules for Water Well Drillers, the state engineer may exact the bond and deposit the money as a non-lapsing dedicated credit.

5.13 The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the Administrative Rules by any well driller.

5.14 An operator's registration may be revoked or suspended for failure to comply with the minimum construction standards.

5.15 Lack of knowledge of the law or the administrative requirements and minimum construction standards related to well drilling shall not constitute an excuse for violation thereof.

5.16 Section 73-3-26 of the Utah Code annotated, 1953, as amended provides that:

5.16.1 Any person who does any of the following is guilty of a Class B misdemeanor:

a. Drills a well or wells or advertises or holds themselves out as a well driller without first obtaining a license or registration;

b. Drills a well or wells after revocation or expiration of the well driller license or operator registration;

c. Drills a well in violation of the Administrative Rules for Water Well Drillers

5.16.2 Each day that a violation continues is a separate offense.

R655-4-6. Renewal of Well Driller's License, Operator's Registration, and Apprenticeship Listing.

6.1 Well Driller's Licenses.

6.1.1 All well driller's licenses expire at 12 midnight on December 31 of the year in which they are issued. Drillers who meet the renewal requirements set forth in Subsection R655-4-6(6.1.2) on or before 12 midnight December 31 shall be authorized to operate as a licensed well driller until the new license is issued. Drillers must renew their licenses within 24 months of the license expiration date. Drillers failing to renew within 24 months of the license expiration date must re-apply for a well driller's license and meet all the application requirements of Subsection R655-4-3(3.2).

6.1.2 Applications to renew a well driller's license must include the following items:

a. Payment of the license renewal fee determined and approved by the legislature;

b. Written application to the state engineer;

c. Documentation of \$5,000 penal bond for the next calendar year;

d. Proper submission of all start cards, official well driller reports (well logs), and well; abandonment reports for the current calendar year;

e. Documentation of compliance with the continuing education requirements described in 6.1.4. Acceptable documentation of attendance at approved courses must include the following information: the name of the course, the date it was conducted, the number of approved credits, the name and signature of the instructor and the driller's name; for example, certificates of completion, transcripts, attendance rosters, diplomas, etc. (Note: drillers are advised that the state engineer will not keep track of the continuing education courses each driller attends during the year. Drillers are responsible to acquire and then submit documentation with the renewal application.)

6.1.3 License renewal applications that do not meet the requirements of Subsection R655-5-6(6.1.2) by December 31 or which are received after December 31, will be assessed an additional administrative late fee determined and approved by the legislature.

6.1.4 During each calendar year, licensed well drillers are required to earn at least six (6) continuing education credits by attending training sessions sponsored or sanctioned by the state engineer. Drillers who do not renew their licenses, but who intend to renew within the 24 month period allowed in Subsection R655-5-6(6.1.1), are also required to earn six (6) continuing education credits each year.

6.1.5 The state engineer shall establish a committee consisting of the state engineer or a representative, no more than four licensed well drillers, a ground water scientist, and a manufacturer/supplier of well drilling products. The committee will develop criteria for the training courses, approve the courses which can offer continuing education credits, and assign the number of credits to each course. The committee will make recommendations to the state engineer concerning appeals from training course sponsors, well drillers, and operators related to earning continuing education credit.

6.1.6 The committee established in Subsection R655-5-6(6.1.5) shall assign the number of continuing education credits to each proposed training session based on the instructor's qualifications, a written outline of the subjects to be covered, and written objectives for the session. Well drillers wishing continuing education credit for other training sessions shall provide the committee with all information it needs to assign continuing education requirements.

6.1.7 The state engineer may renew a license on a restricted, conditional, or limited basis according to the driller's performance and compliance with established rules and construction standards.

6.2 Drill Rig Operator's Registration.

6.2.1 All operator's registrations expire at 12 midnight on December 31 of the year in which they are issued. Operators who meet the renewal requirements set forth in Subsection R655-4-6(6.2.2) on or before 12 midnight December 31 shall be authorized to act as a registered operator until the new registration is issued. Operators must renew their registrations within 12 months of the registration expiration date. Operators failing to renew within 12 months of the registration expiration date must re-apply for an operator's registration and meet all the application requirements of Subsection R655-4-3(3.3).

6.2.2 Applications to renew an operator's registration must include the following items:

a. Payment of the registration renewal fee determined and approved by the legislature;

b. Written application to the state engineer.

6.2.3 Registration renewal applications that do not meet the requirements of Subsection R655-4-6(6.1.2) or that are received after the December 31 expiration date will be assessed an additional administrative late fee determined and approved by the legislature.

6.2.4 During each calendar year, it is suggested that registered operators earn at least three (3) continuing education credits by attending training sessions sponsored or sanctioned by the state engineer. Documented continuing education credits may be allowed as substitute for drilling experience in an application for a well driller's license as described in Subsection R655-4-3(3.2.4).

6.3 Apprenticeship Listing.

6.3.1 All apprentice's listings expire at 12 midnight on December 31 of the year in which they are issued.

6.3.2 A written application must be submitted to the Division of Water Rights to renew an apprenticeship listing.

R655-4-7. The Approval Process for Cathodic Protection Wells, Heating or Cooling Exchange Wells, and Monitor Wells.

7.1 General.

Only cathodic protection wells, heating or cooling exchange wells, and monitor wells drilled and constructed to a depth of 30 feet or greater below natural ground surface require approval from the state engineer.

7.2 Approval to Construct or Replace.

Approval to construct or replace cathodic protection wells, heating or cooling exchange wells, and monitor wells is issued by the state engineer's regional offices following review of written requests from the owner or applicant, federal or state agency or engineering representative. The requests for approval shall be made on forms provided by the state engineer entitled "Request for Non-Production Well". The following information must be included on the form:

a. General location or common description of the project.

b. Specific course and distance locations from established government surveyed outside section corners or quarter corners or location by 1/4, 1/4 section.

c. Total anticipated number of wells to be installed.

d. Diameters, approximate depths and materials used in the wells.

e. Projected start and completion dates.

f. Name and license number of the driller contracted to install the wells.

There is no fee required to request approval to drill a cathodic protection well, a heating or cooling exchange well, or a monitor well. Upon written approval by the state engineer the project will be assigned an approved authorization number which will be referenced on all start cards and official well driller's reports.

R655-4-8. General Requirements.

8.1 Standards.

8.1.1 In some locations, the compliance with the following minimum standards will not result in a well being free from pollution or from being a source of subsurface leakage, waste, or contamination of the groundwater resource. Since it is impractical to attempt to prepare standards for every conceivable situation, the well driller shall judge when to construct wells under more stringent standards when such precautions are necessary to protect the groundwater supply and those using the well in question. Other state and local regulations pertaining to well drilling and construction, groundwater protection, and water quality regulations may exist that are either more stringent than these rules or that specifically apply to a given situation. It is the well driller's responsibility to understand and apply other regulations as applicable.

8.2 Well Site Locations.

8.2.1 Well site locations are described by course and distance from outside section corners or quarter corners (based on a Section/Township/Range Cadastral System) on all state engineer authorizations to drill (Start Cards). However, the licensee should also be familiar with local zoning ordinances, or county boards of

health requirements which may limit or restrict the actual well location and construction in relationship to existing or proposed concentrated sources of pollution or contamination such as septic tanks, drain fields, sewer lines, stock corrals, feed lots, etc. The licensee should also be familiar with the Utah Underground Facilities Act (Title 54, Chapter 8a of the Utah Code Annotated 1953 as amended) which requires subsurface excavators (including well drilling) to notify operators of underground utilities prior to any subsurface excavation. Information on this requirement can be found by calling (800)662-4111.

8.2.2 The driller shall check the drilling location to see if it generally matches the state-approved location listed on the Driller's Start Card. If the actual drilling location is significantly different than the Start Card location, the driller shall indicate the difference on the Well Log.

8.3 Unusual Conditions.

8.3.1 If unusual conditions occur at a well site and compliance with these rules and standards will not result in a satisfactory well or protection to the groundwater supply, a licensed water well driller shall request that special standards be prescribed for a particular well. The request for special standards shall be in writing and shall set forth the location of the well, the name of the owner, the unusual conditions existing at the well site, the reasons that compliance with the rules and minimum standards will not result in a satisfactory well, and the proposed standards that the licensed water well driller believes will be more adequate for this particular well. If the state engineer finds that the proposed changes are in the best interest of the public, he will approve the proposed changes by assigning special standards for the particular well under consideration.

665-4-9. Well Drilling and Construction Requirements.

9.0 General.

9.0.1 Figures 1 through 6 are used to illustrate typical well construction standards, and can be viewed in the publication, State of Utah Administrative Rules for Water Well Drillers, dated January 1, 2001, available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah. Figure 1 illustrates the typical construction of a drilled well with driven casing such as a well drilled using the cable tool method or air rotary with a drill through casing driver. Figure 2 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed without the use of surface casing. Figure 3 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed with the use of surface casing. Figure 4 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed completed in stratified formations in which poor formation material or poor quality water is encountered. Figure 5 illustrates the typical construction of a well completed with PVC or nonmetallic casing.

9.1 Approved Products, Materials, and Procedures.

9.1.1 Any product, material or procedure designed for use in the drilling, construction, cleaning, renovation, development or abandonment of water or monitor wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized. Other products,

materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in this section.

9.2 Well Casing.

9.2.1 Drillers Responsibility. It shall be the sole responsibility of the well driller to determine the suitability of any type of well casing for the particular well being constructed, in accordance with these minimum requirements.

9.2.2 Casing Stick-up. The well casing shall extend a minimum of 18 inches above finished ground level and the natural ground surface should slope away from the casing. A sanitary, weatherproof seal or a completely welded cap shall be placed on the top of the well casing to prevent contamination of the well. If a vent is placed in the cap, it shall be properly screened to prevent access to the well by insects or other animals.

9.2.3 Steel Casing. All steel casing installed in Utah shall be in new or like-new condition, being free from pits or breaks, and shall meet the minimum specifications listed in Table 2 of these rules. In order to utilize steel well casing that does not fall within the categories specified in Table 2, the driller shall receive written approval from the state engineer. All steel casing installed in Utah shall meet or exceed the minimum ASTM, ANSI, or AWWA standards for steel pipe as described in Subsection R655-4-9(9.1.1). Applicable standards (most recent revisions) may include:

- ANSI/AWWA A100—AWWA Standard for Water Wells.
- ANSI/ASTM A53—Standard Specifications for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.
- ANSI/ASTM A139—Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (NPS 4 and over).
- ANSI/ASTM A606—Standard Specification for Steel, Sheet, and Strip, High-Strength, Low-Alloy, Hot-Rolled and Cold-Rolled, with Improved Atmospheric Corrosion Resistance.
- ANSI/AWWA C200—Standard for Steel Water Pipe—6 in. and Larger.
- API Spec. 5L—Specification for Liner Pipe.
- ASTM A778—Standard Specifications for Welded, Unannealed Austenitic Stainless Steel Tubular Products.
- ASTM A252—Standard Specification for Welded and Seamless Steel Pipe Piles.

TABLE 2
MINIMUM WALL THICKNESS FOR STEEL WELL CASING

Nominal Casing Diameter	Depth									
	0 to 200 (ft)	200 to 300 (ft)	300 to 400 (ft)	400 to 600 (ft)	600 to 800 (ft)	800 to 1000 (ft)	1000 to 1500 (ft)	1500 to 2000 (ft)	2000 to 3000 (ft)	3000 to 4000 (ft)
2	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154
3	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216
4	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237
5	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250
6	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250
8	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250
10	.250	.250	.250	.250	.250	.250	.250	.313	.313	.313
12	.250	.250	.250	.250	.250	.250	.250	.313	.313	.313
14	.250	.250	.250	.250	.313	.313	.313	.313	.313	.313
16	.250	.250	.313	.313	.313	.313	.313	.375	.375	.375
18	.250	.313	.313	.313	.375	.375	.375	.375	.438	.438
20	.250	.313	.313	.313	.375	.375	.375	.375	.438	.438
22	.313	.313	.313	.375	.375	.375	.375	.375	.438	.438
24	.313	.313	.375	.375	.375	.438	.438	.438	.438	.438
30	.313	.375	.375	.375	.438	.438	.438	.438	.438	.438

Note: Minimum wall thickness is in inches.

9.2.4 Plastic and Other Non-metallic Casing.

9.2.4.1 Materials. PVC, SR, ABS, or other types of non-metallic well casing and screen may be installed in Utah upon obtaining permission of the well owner. Plastic well casing and screen shall be manufactured and installed to conform with The American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) Standard F 480 (most recent version), which are incorporated by reference to these rules. Casing and screen meeting this standard is normally marked "WELL CASING" and with the ANSI/ASTM designation "F 480-95 (or most recent version), SDR-17 (or 13.5)". All plastic casing and screen for use in potable water supplies shall be manufactured to be acceptable to the American National Standards Institute/National Sanitation Foundation (NSF) standard 61. Other types of plastic casings and screens may be installed upon manufacturers certification that such casing meets or exceeds the above described ASTM/SDR specification or ANSI/NSF approval.

9.2.4.2 Minimum Wall Thickness and Depth Requirements. PVC well casing and screen with an outside diameter less than four and one half (4.5) inches shall meet the minimum wall thickness required under ASTM Standard F480 (most recent version) SDR 21 or a Schedule 40 designation. PVC well casing and screen with an outside diameter of four and one half (4.5) inches or greater shall meet the minimum wall thickness required under ASTM Standard F480 (most recent version) SDR 17 or a Schedule 80 designation. Additionally, caution should be used whenever other than factory slots or perforations are added to PVC well casing. The installation of hand cut slots or perforations significantly reduces the collapse strength tolerances of unaltered casings. The depth at which plastic casing and screen is placed in a well shall conform to the minimum requirements and restrictions as outlined in ASTM Standard F-480 (most recent version).

9.2.4.3 Fiberglass Casing. Fiberglass reinforced plastic well casings and screens may be installed in wells upon obtaining permission of the well owner. All fiberglass casing or screens installed in wells for use in potable water supplies shall be manufactured to be acceptable by ANSI/NSF Standard 61.

9.2.4.4 Driving Non-metallic Casing. Non-metallic casing shall not be driven or dropped and may only be installed in an oversized borehole.

9.2.4.5 Protective Casing. If plastic or other non-metallic casing is utilized, the driller shall install a protective steel casing which complies with the provisions of Subsection R655-4-9(9.2.3) over and around the well casing at ground surface to a depth of at least two and one half (2.5) feet. If a pitless adapter is installed on the well, the bottom of the steel protective casing shall be placed above the pitless adapter/well connection. The steel casing shall be sealed in the borehole in accordance with the requirements of Subsection R655-4-9(9.4). The annular space between the steel protective casing and non-metallic casing shall also be sealed with acceptable materials in accordance with Subsection R655-4-9(9.4). A sanitary, weather-tight seal or a completely welded cap shall be placed on top of the protective casing. If the sanitary seal is vented, screens shall be placed in the vent to prevent insects and other animals from entering the well. This protective casing requirement does not apply to monitor wells. Figure 5 depicts this requirement.

9.3 Casing Joints.

9.3.1 General. All well casing joints shall be made water tight. In instances in which a reduction in casing diameter is made, there shall be enough overlap of the casings to prevent misalignment and to insure the making of an adequate seal in the annular space between casings to prevent the movement of unstable sediment or formation material into the well, in addition to preventing the degradation of the water supply by the migration of inferior quality water through the annular space between the two casings.

9.3.2 Steel Casing. All steel casing shall be screw-coupled or welded. If the joints are welded, the weld shall be at least as thick as the wall thickness of the casing and shall consist of at least two beads for the full circumference of the joint. Spot welding of joints is prohibited.

9.3.3 Plastic Casing. All plastic well casing shall be mechanically screw coupled, chemically welded, cam-locked or lug coupled to provide water tight joints as per ANSI/ASTM F480 (most recent version). Metal screws driven into casing joints shall not be long enough to penetrate the inside surface of the casing. Metal screws should be used only when surrounding air temperatures are below 50 degrees Fahrenheit (F) which retards the normal setting of the cement.

9.4 Surface Seals and Interval Seals.

9.4.1 General. Before the drill rig is removed from the drill site of a well, a surface seal shall be installed. Well casings shall be sealed to prevent the possible downward movement of contaminated surface waters in the annular space around the well casing. The seal shall also prevent the upward movement of artesian waters within the annular space around the well casing. The sealing is also to prevent the movement of groundwater either upward or downward from zones that have been cased out of the well due to poor water quality or other reasons. The following surface seal requirements apply equally to rotary drilled, cable tool drilled, bored, jetted, augered, and driven wells unless otherwise specified.

9.4.2 Seal Material.

9.4.2.1 General. The seal material shall consist of neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout as defined in Section R655-4-2. Use of sealing materials other than those listed above must be approved by the state engineer. Bentonite drilling fluid (mud) or drill cuttings are not an acceptable bentonite grout or sealing material. In no case shall drilling fluid (mud), drill cuttings, drill chips, or puddling clay be used, or allowed to fill, partially fill, or fall into the required sealing interval of a well during construction of the well. All hydrated sealing materials shall be placed by tremie pipe, pumping, or pressure from the bottom of the seal interval upwards in one continuous operation when placed below a depth of 30 feet or when placed below static groundwater level. Portland Cement grouts must be allowed to cure a minimum of 72 hours for Type I-II cement or 36 hours for Type III cement before well drilling, construction, or testing may be resumed. The volume of annular space in the seal interval shall be calculated by the driller to determine the estimated volume of seal material required to seal the annular space. The driller shall place at least the volume of material equal to the volume of annular space. The driller shall place at least the volume of material equal to the volume of annular space, thus ensuring that a continuous seal is placed. The driller shall maintain the well casing centered in the

borehole during seal placement using centralizers or other means to ensure that the seal is placed radially and vertically continuous.

9.4.2.2 Bentonite Grout. Bentonite used to prepare grout for sealing shall have the ability to gel; not separate into water and solid materials after it gels; have a hydraulic conductivity or permeability value of 10^{-7} centimeters per second or less; contain at least 20 percent solids by weight of bentonite, and have a fluid weight of 9.5 pounds per gallon or greater and be specifically designed for the purpose of sealing. Bentonite or polymer drilling fluid (mud) does not meet the definition of a grout with respect to density, gel strength, and solids content and shall not be used for sealing purposes. At no time shall bentonite grout contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite grout shall be prepared and installed according to the manufacturer's instructions. All additives must be certified by a recognized certification authority such as NSF.

9.4.2.3 Unhydrated Bentonite. Unhydrated bentonite (e.g., granular, tabular, pelletized, or chip bentonite) may be used in the construction of well seals above a depth of 50 feet. Unhydrated bentonite can be placed below a depth of 50 feet when placed inside the annulus of two casings or when placed using a tremie pipe. The bentonite material shall be specifically designed for well sealing and be within industry tolerances. All unhydrated bentonite used for sealing must be free of organic polymers and other contamination. Placement of bentonite shall conform to the manufacturer's specifications and instructions and result in a seal free of voids or bridges. Granular or powered bentonite shall not be placed under water by gravity feeding from the surface. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

9.4.3 Seal and Unperforated Casing Placement.

9.4.3.1 General Seal Requirements. Figure 1 illustrates the construction of a surface seal for a typical well. The surface seal must be placed in an annular space that has a minimum diameter of four (4) inches larger than the nominal size of the permanent well casing (This amounts to a 2-inch annulus). The surface seal must extend from land surface to a minimum depth of 30 feet. The completed surface seal must fully surround the permanent well casing, must be evenly distributed, free of voids, and extend to undisturbed or recompacted soil. A surface casing with a minimum depth of 30 feet and a minimum nominal diameter of four (4) inches greater than the permanent casing may be used in unconsolidated formations such as gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the borehole open are not employed. The surface casing shall be removed in conjunction with the placement of the seal. Alternatively, the surface casing may be sealed permanently in place to a depth of 30 feet with a minimum 2-inch annular seal between the surface casing and borehole wall. If the surface casing is to be removed, the surface casing shall be withdrawn as sealing material is placed between the permanent well casing and borehole wall. The sealing material shall be kept at a sufficient height above the bottom of the temporary surface casing as it is withdrawn to prevent caving of the borehole wall. If the temporary conductor casing is driven in place without a 2-inch annular seal between the surface casing and borehole wall, the surface casing may be left in place in

the borehole only if it is impossible to remove because of unforeseen conditions and not because of inadequate drilling equipment, or if the removal will seriously jeopardize the integrity of the well and the integrity of subsurface barriers to pollutants or contaminant movement. The temporary surface casing can only be left in place without a sufficient 2-inch annular seal as describe above with the approval of the state engineer on a case by case basis. If the surface casing is left in place, it shall be perforated to allow seal material to penetrate through the casing and into the formation and annular space between the surface casing and borehole wall. Unhydrated bentonite shall not be used to construct the surface seal when the surface casing is left in place. Grout seal materials must be used to construct the surface seal when the surface casing is left in place. The grout must be placed with sufficient pressure to force the grout through the surface casing perforations and into the annular space between the surface casing and borehole wall and into the formation. Surface seals and unperforated casing shall be installed in wells located in unconsolidated formation such as sand and gravel with minor clay or confining units; unconsolidated formation consisting of stratified layers of materials such as sand, gravel, and clay or other confining units; and consolidated formations according to the following procedures.

9.4.3.2 Unconsolidated Formation without Significant Confining Units. This includes wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet. Permanent unperforated casing shall extend at least to a depth of 30 feet and also extend below the lowest anticipated pumping level. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection R655-4-9(9.2) unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.3 Unconsolidated Formation with Significant Confining Units. This includes wells that penetrate an aquifer overlain by clay or other confining formations that are at least six (6) feet thick. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into the confining unit above the water bearing formation. Unperforated casing shall extend from ground surface to at least 30 feet and to the bottom of the confining unit overlying the water bearing formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection R655-4-9(9.2) unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.4 Consolidated Formation. This includes drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into competent consolidated formation. Unperforated permanent casing shall be installed to extend to a depth of at least 30 feet and the lower part of the casing shall be driven and sealed at least five (5) feet into the consolidated formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between

the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection R655-4-9(9.2) unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.5 Sealing Artesian Wells. Unperforated well casing shall extend into the confining stratum overlying the artesian zone, and shall be adequately sealed into the confining stratum to prevent both surface and subsurface leakage from the artesian zone. If leaks occur around the well casing or adjacent to the well, the well shall be completed with the seals, packers, or casing necessary to eliminate the leakage. The driller shall not move the drilling rig from the well site until leakage is completely stopped, unless authority for temporary removal of the drilling rig is granted by the state engineer, or when loss of life or property is imminent. If the well flows from the well at land surface, the well shall be equipped with a control valve so that the flow can be completely stopped. The control valve must be available for inspection by the state engineer at all times.

9.4.4 Interval Seals. Formations containing undesirable materials (e.g., fine sand and silt that can damage pumping equipment and result in turbid water), contaminated groundwater, or poor quality groundwater must be sealed off so that the unfavorable formation cannot contribute to the performance and quality of the well. These zones must also be sealed to eliminate the potential of cross contamination or commingling between two aquifers of differing quality. Figure 4 illustrates this situation.

9.4.5 Other Sealing Methods. In wells where the above described methods of well sealing do not apply, special sealing procedures can be approved by the state engineer upon request by the licensed well driller.

9.5 Special Requirements for Oversized and Gravel Packed Wells.

9.5.1 Oversized Borehole. The diameter of the borehole shall be at least four (4) inches larger than the outside diameter of the well casing to be installed to allow for proper placement of the gravel pack and/or formation stabilizer and adequate clearance for grouting and surface seal installations. In order to accept a smaller diameter casing in any oversized borehole penetrating unconsolidated or stratified formations, the annular space must be sealed in accordance with Subsection R655-4-9(9.4). In order to minimize the risk of: 1) borehole caving or collapse; 2) casing failure or collapse; or 3) axial distortion of the casing, it is recommended that the entire annular space in an oversized borehole between the casing and borehole wall be filled with formation stabilizer such as approved seal material, gravel pack, filter material or other state engineer-approved materials. Well casing placed in an oversized borehole should be suspended at the ground surface until all formation stabilizer material is placed in order to reduce axial distortion of the casing if it is allowed to rest on the bottom of an open oversized borehole. In order to accept a smaller diameter casing, the annular space in an oversized borehole penetrating unconsolidated formations (with no confining layer) must be sealed in accordance with Subsection R655-4-9(9.4) to a depth of at least 30 feet or from static water level to ground surface, whichever is deeper. The annular space in an oversized borehole penetrating stratified or consolidated formations must be sealed in accordance with Subsection R655-4-9(9.4) to a depth of at least 30 feet or five (5) feet into an impervious strata (e.g., clay) or competent

consolidated formation overlying the water producing zones back to ground surface, whichever is deeper. Especially in the case of an oversized borehole, the requirements of Subsection R655-4-9(9.4.4) regarding interval sealing must be followed.

9.5.2 Gravel Pack or Filter Material. The gravel pack or filter material shall consist of clean, well rounded, chemically stable grains that are smooth and uniform. The filter material should not contain more than 2% by weight of thin, flat, or elongated pieces and should not contain organic impurities or contaminants of any kind. In order to assure that no contamination is introduced into the well via the gravel pack, the gravel pack must be washed with a minimum 100 ppm solution of chlorinated water or dry hypochlorite mixed with the gravel pack at the surface before it is introduced into the well (see Table 3 of these rules for required amount of chlorine material).

9.5.3 Placement of Filter Material. All filter material shall be placed using a method that through common usage has been shown to minimize a) bridging of the material between the borehole and the casing, and b) excessive segregation of the material after it has been introduced into the annulus and before it settles into place. It is not acceptable to place filter material by pouring from the ground surface unless proper sounding devices are utilized to measure dynamic filter depth, evaluate pour rate, and minimize bridging and formation of voids.

9.5.4 No Surface Casing Used. If no permanent surface casing is installed, neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite seal shall be installed in accordance with Subsection R655-4-9(9.4). Figure 2 of these rules illustrates the construction of a typical well of this type.

9.5.5 Surface Casing Used. If permanent surface casing is installed, it shall be unperforated and installed and sealed in accordance with Subsection R655-4-9(9.4) as depicted in Figure 3 of these rules. After the gravel pack has been installed between the surface casing and the well casing, the annular space between the two casings shall be sealed by either welding a water-tight steel cap between the two casings at land surface or filling the annular space between the two casings with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite from at least 50 feet to the surface and in accordance with Subsection R655-4-9(9.4).

9.5.6 Gravel Feed Pipe. If a gravel feed pipe, used to add gravel to the gravel pack after well completion, is installed, the diameter of the borehole in the sealing interval must be at least four (4) inches in diameter greater than the permanent casing plus the diameter of the gravel feed pipe. The gravel feed pipe must be completely surrounded by the seal. The gravel feed pipe must extend at least 18 inches above ground and must be sealed at the top with a water tight cap or plug (see Figure 2).

9.6 Protection of the Aquifer.

9.6.1 Drilling Fluids and LCMs. The well driller shall take due care to protect the producing aquifer from clogging or contamination. Every effort shall be made to remove all substances and materials introduced into the aquifer or aquifers during well construction. "Substances and materials" shall mean all drilling fluids, filter cake, and any other organic or inorganic substances added to the drilling fluid that may seal or clog the aquifer. The introduction of lost circulation materials (LCM's) during the drilling process shall be limited to those products which will not present a potential medium for bacterial growth or contamination. Only LCM's which are non-organic and biodegradable, such as "rock

wool" consisting of spun calcium carbonate, which can be safely broken down and removed from the borehole, may be utilized. This is especially important in the construction of wells designed to be used as a public water system supply.

9.6.2 Containment of Drilling Fluid. Drilling or circulating fluid introduced into the drilling process shall be contained in a manner to prevent surface or subsurface contamination and to prevent degradation of natural or man-made water courses or impoundments.

9.6.3 Mineralized, Contaminated or Polluted Water. Whenever a water bearing stratum that contains nonpotable mineralized, contaminated or polluted water is encountered, the stratum shall be adequately sealed off so that contamination or co-mingling of the overlying or underlying groundwater zones will not occur (see Figure 4).

9.6.4 Drilling Equipment. All tools, drilling equipment, and materials used to drill a well shall be free of contaminants prior to beginning well construction. Contaminants include lubricants, fuel, bacteria, etc. that will reduce the well efficiency, and any other item(s) that will be harmful to public health and/or the resource or reduce the life of the water well. It is recommended that excess lubricants placed drilling equipment be wiped clean prior to insertion into the borehole.

9.6.5 Well Disinfection and Chlorination of Water. No contaminated or untreated water shall be placed in a well during construction. Water should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to give 100 parts per million free chlorine residual. Upon completion of a well or work on a well, the driller shall disinfect the well using accepted disinfection procedures to give 100 parts per million free chlorine residual in the well water. Table 3 provides the amount of common laundry bleach or dry powder hypochlorite required per 100 gallons of water or 100 feet linear casing volume of water to mix a 100 parts per million solution. Additional recommendations and guidelines for water well system disinfection are available from the state engineer upon request.

TABLE 3
AMOUNT OF HYPOCHLORITE FOR EACH 100 FEET OF WATER
STANDING IN WELL (100 ppm solution)

Well Diameter (inches)	5.25% Solution (cups)	25% Powder (ounces)	70% Powder (ounces)
2	0.50	1.00	0.50
4	2.25	3.50	1.50
6	5.00	8.00	3.00
8	8.50	14.50	5.50
10	13.00	22.50	8.50
12	19.00	32.50	12.00
14	26.00	44.50	16.50
16	34.00	58.00	26.00
20	53.00	90.50	33.00
For every 100 gal. of water add:	3.50	5.50	2.00

NOTES: *Common Laundry Bleach
**High Test Hypochlorite

9.7. Special Requirements.

9.7.1. Explosives. Explosives used in well construction shall not be detonated within the section of casing designed or expected

to serve as the surface seal of the completed well, whether or not the surface seal has been placed. If explosives are used in the construction of a well, their use shall be reported on the official well log. In no case shall explosives, other than explosive shot perforators specifically designed to perforate steel casing, be detonated inside the well casing or liner pipe.

9.7.2 Access Port. Every well shall be equipped with a usable access port so that the position of the water level, or pressure head, in the well can be measured at all times.

9.7.3 Completion or Abandonment. A licensed driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravel packs or curbs required. Dry boreholes, or otherwise unsuccessful attempts at completing a well, shall be properly abandoned in accordance with Section R655-4-12. Upon completion, all wells shall be equipped with a water-tight, tamper-resistant casing cap or sanitary seal.

9.7.4 Surface Security. If it becomes necessary for the driller to temporarily discontinue the drilling operation before completion of the well or otherwise leave the well or borehole unattended, the well and/or borehole must be covered securely to prevent contaminants from entering the casing or borehole and rendered secure against entry by children, vandals, domestic animals, and wildlife.

9.7.5 Pitless Adapters. Pitless adapters or units are acceptable to use with steel well casing as long as they are installed in accordance with manufacturers recommendations and specifications. The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be water tight and to prevent contamination of the potable water supply from external sources. Pitless adapters or units are not recommended to be mounted on PVC well casing. If a pitless adapter is to be used with PVC casing, it should be designed for use with PVC casing, and the driller should ensure that the weight of the pump and column do not exceed the strength of the PVC well casing.

9.7.6 Hydraulic Fracturing. The hydraulic fracturing pressure shall be transmitted through a drill string and shall not be transmitted to the well casing. Hydraulic fracturing intervals shall be at least 20 feet below the bottom of the permanent casing of a well. All hydraulic fracturing equipment shall be thoroughly disinfected with a 100 part per million chlorine solution prior to insertion into the well. The driller shall include the appropriate hydraulic fracturing information on the well log including methods, materials, maximum pressures, location of packers, and initial/final yields.

9.7.7 Static Water Level, Well Development, and Well Yield. To fulfill the requirements of Subsection R655-4-4(4.5.2), new wells designed to produce water shall be developed to remove drill cuttings, drilling mud, or other materials introduced into the well during construction and to restore the natural groundwater flow to the well to the extent possible. After a water production well is developed, a test should be performed to determine the rate at which groundwater can be reliably produced from the well. Following development and testing, the static water level in the well should also be measured. Static water level, well development information, and well yield information shall be noted on the official submittal of the Well Log by the well driller.

R655-4-10. Special Wells.10.1 Construction Standards for Special Wells.

10.1.1 General. The construction standards outlined in Section R655-4-9 are meant to serve as minimum acceptable construction standards. Certain types of wells such as cathodic protection wells, heating or cooling exchange wells, recharge and recovery wells, and public supply wells require special construction standards that are addressed in this section or in rules promulgated by other regulating agencies. At a minimum, when constructing special wells as listed above, the well shall be constructed by a licensed well driller, and the minimum construction standards of Section R655-4-9 shall be followed in addition to the following special standards.

10.1.2 Public Water Supply Wells. Public water supply wells are subject to the minimum construction standards outlined in Section R655-4-4 in addition to the requirements established by the Department of Environmental Quality, Division of Drinking Water under Rules R309-204 and R309-600. Plans and specifications for a public supply well must be reviewed and approved by the Division of Drinking Water before the well is drilled. These plans and specifications shall include the procedures, practices, and materials used to drill, construct, seal, develop, clean, disinfect, and test the public supply well. A Preliminary Evaluation Report describing the potential vulnerability and protection strategies of the new well to contamination must also be submitted and approved prior to drilling. A representative of the Division of Drinking Water must be present at the time the surface grout seal is placed in all public supply wells, so that the placement of the seal can be certified. In order to assure that a representative will be available, and to avoid down-time waiting for a representative, notice should be given several days in advance of the projected surface grout seal placement. When the time and date for the surface grout seal installation are confirmed a definite appointment should be made with the representative of the Division of Drinking Water to witness the grout seal placement by calling (801)536-4200. The licensed driller shall have available a copy of the start card relating to the well and provide that information to the inspecting representative at the time of the surface grout seal installation and inspection.

10.1.3 Cathodic Protection Well Construction. Cathodic protection wells shall be constructed in accordance with the casing, joint, surface seal, and other applicable requirements outlined in Section R655-4-9. Any annular space existing between the base of the annular surface seal and the top of the anode and conductive fill interval shall be filled with appropriate fill or sealing material. Fill material shall consist of washed granular material such as sand, pea gravel, or sealing material. Fill material shall not be subject to decomposition or consolidation and shall be free of pollutants and contaminants. Fill material shall not be toxic or contain drill cuttings or drilling mud. Additional sealing material shall be placed below the minimum depth of the annular surface seal, as needed, to prevent the cross-connection and commingling of separate aquifers and water bearing zones. Vent pipes, anode access tubing, and any other tubular materials (i.e., the outermost casing) that pass through the interval to be filled and sealed are considered casing for the purposes of these standards and shall meet the requirements of Subsections R655-4-9(9.2) and R655-4-9(9.3). Cathodic protection well casing shall be at least 2 inches in internal diameter to facilitate eventual well abandonment. Figure 6 illustrates the construction of a typical cathodic protection well.

10.1.4 Heating or Cooling Exchange Wells. Wells or boreholes utilized for heat exchange or thermal heating, which are 30 feet or greater in depth and encounter formations containing groundwater, must be drilled by a licensed driller and the owner or applicant must have an approved application for that specific purpose as outlined in Section R655-4-7. Wells or boreholes installed for heat or thermal exchange process must comply with the minimum construction standards of Rule R655-4. If a separate well or borehole is required for re-injection purposes, it must also comply with these standards and the groundwater must be injected into the same water bearing zones as from which it is initially withdrawn. The quality and quantity of groundwater shall not be diminished or degraded upon re-injection.

10.1.5 Recharge and Recovery Wells. Any well drilled under the provisions of Title 73, Chapter 3b (Groundwater Recharge and Recovery Act) shall be constructed in a manner consistent with these rules and shall be drilled by a currently licensed driller. Special rules regarding the injection of water into the ground are also promulgated under the jurisdiction of the Utah Department of Environmental Quality, Division of Water Quality (Rule R317-7 "Underground Injection Control Program" of the Utah Administrative Code) and must be followed in conjunction with the Water Well Drilling rules.

R655-4-11. Deepening, Rehabilitation, and Renovation of Wells.11.1 Sealing of Casing.

11.1.1 If in the repair of a drilled well, the old casing is withdrawn, the well shall be recased and resealed in accordance with the rules provided in Subsection R655-4-9(9.4).

11.2 Inner Casing.

11.2.1 If an inner casing is installed to prevent leakage of undesirable water into a well, the space between the two well casings shall be completely sealed using packers, casing swedging, pressure grouting, etc., to prevent the movement of water between the casings.

11.3 Outer Casing.

11.3.1 If the "over-drive" method is used to eliminate leakage around an existing well, the casing driven over the well shall meet the minimum specifications listed in Subsection R655-4-9(9.4).

11.4 Artesian Wells.

11.4.1 If upon deepening an existing well, an artesian zone is encountered, the well shall be cased and completed as provided in Subsection R655-4-9(9.4).

11.5 Drilling in a Dug Well.

11.5.1 A drilled well may be constructed through an existing dug well provided that:

11.5.1.1 Unperforated Casing Requirements. An unperforated section of well casing extends from a depth of at least ten (10) feet below the bottom of the dug well and at least 20 feet below land surface to above the maximum static water level in the dug well.

11.5.1.2 Seal Required. A two foot thick seal of neat cement grout, sand cement grout, or bentonite grout is placed in the bottom of the dug well so as to prevent the direct movement of water from the dug well into the drilled well.

11.5.1.3 Test of Seal. The drilled well shall be pumped or bailed to determine whether the seal described in Subsection R655-4-11(11.5.1.2) is adequate to prevent movement of water from the dug well into the drilled well. If the seal leaks, additional sealing and testing shall be performed until a water tight seal is obtained.

11.6 Well Rehabilitation and Cleaning.

11.6.1 Tools used to rehabilitate or clean a well shall be cleaned, disinfected, and free of contamination prior to placement in a well.

11.6.2 The driller shall use rehabilitation and cleaning tools properly so as not to permanently damage the well or aquifer. If the surface seal is damaged or destroyed in the process of rehabilitation or cleaning, the driller shall repair the surface seal to the standards set forth in Subsection R655-4-9(9.4).

11.6.3 Debris, sediment, and other materials displaced inside the well and surrounding aquifer as a result of rehabilitation or cleaning shall be completely removed by pumping, bailing, well development, or other approved methods.

11.6.4 Detergents, chlorine, acids, or other chemicals placed in wells for the purpose of increasing or restoring yield, shall be specifically designed for that purpose and used according to the manufacturer's recommendations.

11.6.5 Any renovation, rehabilitation, cleaning, or other work on a well that requires alteration of the well itself shall be conducted by a licensed well driller.

11.6.6 Following completion of deepening, renovation, rehabilitation, cleaning, or other work on a well, the well shall be properly disinfected in accordance with Subsection R655-4-9(9.6.5).

R655-4-12. Abandonment of Wells.12.1 Temporary Abandonment.

12.1.1 When any well is temporarily removed from service, the top of the well shall be sealed with a tamper resistant, water-tight cap or seal. If a well is in the process of being drilled and is temporarily abandoned, the well shall be sealed with a tamper resistant, water-tight cap or seal and a surface seal installed in accordance with Subsection R655-4-9(9.4). The well may be temporarily abandoned during construction for a maximum of 90 days. After the 90 day period, the temporarily abandoned well shall be permanently abandoned in accordance with the following requirements, and an official well abandonment report (abandonment log) must be submitted in compliance with Section R655-4-4.

12.2 Permanent Abandonment.

12.2.1 The rules of this section apply to the abandonment of the type of wells listed in Subsection R655-4-1(1.2) including private water wells, public supply wells, monitor wells, cathodic protection wells, and heating or cooling exchange wells. A licensed driller shall notify the state engineer prior to commencing abandonment work and submit a complete and accurate abandonment log following abandonment work in accordance with Section R655-4-4 of these rules. Prior to commencing abandonment work, the driller shall obtain a copy of the well log of the well proposed to be abandoned from the well owner or the state engineer, if available, in order to determine the proper abandonment procedure. Any well that is to be permanently abandoned shall be completely filled in a manner to prevent vertical movement of water within the borehole as well as preventing the annular space surrounding the well casing from becoming a conduit for possible contamination of the groundwater supply. A well driller who wishes to abandon a well in a manner that does not comply with the provisions set forth in this section must request approval from the state engineer.

12.3 License Required.

12.3.1 Well abandonment shall be accomplished under the direct supervision of a currently licensed water well driller who shall be responsible for verification of the procedures and materials used.

12.4 Acceptable Materials.

12.4.1 Neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout shall be used to abandon wells and boreholes. Other sealing materials or additives, such as fly ash, may be used in the preparation of grout upon approval of the state engineer. Drilling mud or drill cuttings shall not be used as any part of a sealing materials for well abandonment. The liquid phase of the abandonment fluid shall be water from a potable municipal system or disinfected in accordance with Subsection R655-4-9(9.6.5).

12.5 Placement of Materials.

12.5.1 Neat cement and sand cement grout shall be introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the well. The sealing material shall be placed by the use of a grout pipe, tremie line, dump bailer or equivalent in order to avoid freefall, bridging, or dilution of the sealing materials or separation of aggregates from sealants. Sealing material shall not be installed by freefall (gravity) unless the interval to be sealed is dry and no deeper than 30 feet below ground surface. If the well to be abandoned is a flowing artesian well, the well may be pressure grouted from the surface. The well should be capped immediately after placement of seal materials to allow the seal material to set up and not flow out of the well.

12.5.2 Bentonite-based abandonment products shall be mixed and placed according to manufacturer's recommended procedures and result in a seal free of voids or bridges. Granular or powered bentonite shall not be placed under water. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

12.5.3 The uppermost ten (10) feet of the abandoned well casing or borehole shall consist of neat cement grout or sand cement grout.

12.5.4 Abandonment materials placed opposite any non-water bearing intervals or zones shall be at least as impervious as the formation or strata prior to penetration during the drilling process.

12.5.5 Prior to well or borehole abandonment, all pump equipment, piping, and other debris shall be removed to the extent possible. The well shall also be sounded immediately before it is plugged to make sure that no obstructions exist that will interfere with the filling and sealing. If the well contains lubricating oil that has leaked from a turbine shaft pump, it shall be removed from the well prior to abandonment and disposed of in accordance with applicable state and federal regulations.

12.5.6 Verification shall be made that the volume of sealing and fill material placed in a well during abandonment operations equals or exceeds the volume of the well or borehole to be filled and sealed.

12.6 Termination of Casing.

12.6.1 The casings of wells to be abandoned shall be severed a minimum of two feet below either the natural ground surface adjacent to the well or at the collar of the hole, whichever is the lower elevation. A minimum of two (2) feet of compacted native

material shall be placed above the abandoned well upon completion.

12.7 Abandonment of Artesian Wells.

12.7.1 A neat cement grout, sand-cement grout, or concrete plug shall be placed in the confining stratum overlying the artesian zone so as to prevent subsurface leakage from the artesian zone. The remainder of the well shall be filled with sand-cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. The uppermost ten (10) feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.8 Abandonment of Drilled and Jetted Wells.

12.8.1 A neat cement grout or sand cement grout plug shall be placed opposite all perforations, screens or openings in the well casing. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or bentonite slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.9 Abandonment of Gravel Packed Wells.

12.9.1 All gravel packed wells shall be pressure grouted throughout the perforated or screened section of the well. The remainder of the well shall be filled with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.10 Removal of Casing.

12.10.1 It is recommended that the well casing be removed during well abandonment, and when doing so, the abandonment materials shall be placed from the bottom of the well or borehole progressively upward as the casing is removed. The well shall be sealed with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. In the case of gravel packed wells, the entire gravel section shall be pressure grouted. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12(12.5.3).

12.11 Replacement Wells.

12.11.1 Wells which are to be removed from operation and replaced by the drilling of a new well under an approved replacement application, shall be abandoned in a manner consistent with the provisions of Section R655-4-12 before the rig is removed from the site of the newly constructed replacement well, unless written authorization to remove the rig without abandonment is provided by the state engineer. Also refer to the requirements provided in Subsection R655-4-4(4.4).

12.12 Abandonment of Cathodic Protection Wells.

12.12.1 The general requirements for permanent well abandonment in accordance with Section R655-4-12 shall be followed for the abandonment of cathodic protection wells.

12.12.2 A cathodic protection well shall be investigated before it is destroyed to determine its condition, details of its construction and whether conditions exist that will interfere with filling and sealing.

12.12.3 Casing, cables, anodes, granular backfill, conductive backfill, and sealing material shall be removed as needed, by re-drilling, if necessary, to the point needed to allow proper placement of abandonment material. Casing that cannot be removed shall be adequately perforated or punctured at specific intervals to allow pressure injection of sealing materials into granular backfill and all other voids that require sealing.

R655-4-13. Monitor Well Construction Standards.

13.1 Scope.

13.1.1 Certain construction standards that apply to water wells also apply to monitor wells. Therefore, these monitoring well standards refer frequently to the water well standard sections of the rules. Standards that apply only to monitor wells, or that require emphasis, are discussed in this section. Figure 7 illustrates a schematic of an acceptable monitor well with an above-ground surface completion. Figure 8 illustrates a schematic of an acceptable monitor well with a flush-mount surface completion. Figures 7 and 8 can be viewed in the publication, State of Utah Administrative Rules for Water Well Drillers, dated January 1, 2001, available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah.

13.1.2 These standards are not intended as a complete manual for monitoring well construction, alteration, maintenance, and abandonment. These standards serve only as minimum statewide guidelines towards ensuring that monitor wells do not constitute a significant pathway for the movement of poor quality water, pollutants, or contaminants. These standards provide no assurance that a monitor well will perform a desired function. Ultimate responsibility for the design and performance of a monitoring well rests with the well owner and/or the owner's contractor, and/or technical representative(s). Most monitor well projects are the result of compliance with the Environmental Protection Agency (EPA), Federal Regulations such as the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), or specific State Solid and Hazardous Waste requirements. The contracts governing their installation are tightly written containing specific requirements as to site location, materials used, sampling procedures and overall objectives. Therefore specific construction requirements for monitor well installation shall be governed by applicable contracts and regulations providing they meet or exceed state requirements and specifications. Guidelines and recommended practices dealing with the installation of monitor wells may be obtained from the state engineer upon request. Additional recommended information may be obtained from the Environmental Protection Agency (EPA), Resource Conservation and Recovery Act (RCRA), Groundwater Monitoring Enforcement and Compliance Document available from EPA's regional office in Denver, Colorado and from the Handbook of Suggested Practices for the Design and Installation of Groundwater Monitoring Wells, available from the National Groundwater Association in Dublin, Ohio.

13.2 Installation and Construction.

13.2.1 Materials and Equipment Contaminant-Free. All material used in the installation of monitor wells shall be contaminant-free when placed in the ground. Drilling equipment shall be clean and contaminant free in accordance with Subsection R655-4-9(9.6.4). During construction contaminated water should not be allowed to enter contaminant-free geologic formations or water bearing zones.

13.2.2 Borehole Integrity. Some minor cross-contamination may occur during the drilling process, but the integrity of the borehole and individual formations must then be safeguarded from permanent cross connection.

13.2.3 Casing and Screen. The well casing should be perforated or screened and filter packed with sand or gravel where

necessary to provide adequate sample collection at depths where appropriate aquifer flow zones exist. The casing and screen selected shall not affect or interfere with the chemical, physical, radiological, or biological constituents of interest. Screens in the same well shall not be placed across separate water bearing zones in order to minimize interconnection, aquifer commingling, and cross contamination. Screens in a nested well can be placed in separate water bearing zones as long as the intervals between the water bearing zones are appropriately sealed and aquifer cross connection and commingling does not occur. Monitor well casing and screen shall conform to ASTM standards, or consist of at least 304 or 316 stainless steel, PTFE (Teflon), or Schedule 40 PVC casing.

13.2.4 Gravel/Filter Pack. If installed, the gravel or filter pack should generally extend two (2) feet to ten (10) feet above screened or perforated areas to prevent the migration of the sealing material from entering the zones being sampled. Gravel or filter pack material shall meet the requirements of Subsection R655-4-9(9.5.2). Gravel/filter pack for monitoring wells does not require disinfection. Drill cutting should not be placed into the open borehole annulus. The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the gravel pack by means of a sounding device or other mechanism.

13.2.5 Annular Seal. All monitor wells constructed shall have a continuous surface seal, which seals the annular space between the borehole and the permanent casing, in accordance with the provisions in Section R655-4-9. The surface seal depth requirements of Section R655-4-9 do not apply to monitor wells. The surface seal may be more or less than 50 feet depending on the screen/perforation and/or gravel pack interval. Seals shall also be constructed to prevent interconnection and commingling of separate aquifers penetrated by the well, prevent migration of surface water and contaminations into the well and aquifers, and shall provide casing stability. The seal shall have a minimum diameter of four inches larger than the nominal size of the permanent casing, and shall extend from land surface to the top of the filter pack. After the permanent casing and filter pack (optional) has been set in final position, a layer of bentonite or fine sand (e.g., mortar sand) shall be placed on top of the filter pack to maintain separation between the seal material and the screened interval in order to insure that the seal placement will not interfere with the filter pack. The remaining annular space shall be filled to land surface in a continuous operation with unhydrated bentonite, neat cement grout, sand-cement grout, or bentonite grout. Only potable water should be used to hydrate any grout or slurry mixture. The completed annular space shall fully surround the permanent casing, be evenly distributed, free of voids, and extend from the permanent casing to undisturbed or recompacted soil. All sealing materials and placement methods shall conform to the standards in Section R655-4-2 and Subsection R655-4-9(9.4). The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the seal.

13.2.6 Cuttings, Decon Water, Development Water, and Other IDW. Drill cuttings, decontamination (Decon) water, monitor well development water, and other investigation derived waste (IDW) shall be managed and disposed of in accordance with applicable state and federal environmental regulations. It is the responsibility of the driller to know and understand such requirements.

13.3 Minimum Surface Protection Requirements.

13.3.1 If a well is cased with metal and completed above ground surface, a locking water resistant cap shall be installed on the top of the well.

13.3.2 If the well is not cased with metal and completed above ground surface, a protective metal casing shall be installed over and around the well. The protective casing shall be cemented at least two feet into the ground around the nonmetallic casing. A water tight cap shall be installed in the top of the well casing. A locking cap shall be installed on the top of the protective casing.

13.3.3 Monitor wells completed above ground and potentially accessible to vehicular damage shall be protected in the following manner. At least three metal posts, at least three inches in diameter, shall be cemented in place around the casing. Each post shall extend at least three feet above and two feet below ground surface. A concrete pad may be installed to add protection to the surface completion. If installed, the concrete pad shall be at least four (4) inches thick and shall slope to drain away from the well casing. The base shall extend at least two (2) feet laterally in all directions from the outside of the well boring. When a concrete pad is used, the well seal may be part of the concrete pad.

13.3.4 If the well is completed below land surface, a water tight cap with a lock shall be attached to the top of the well casing. A metal monument or equivalent shall be installed over and around the well. The monument shall serve as a protective cover and be installed level with the land surface and be equipped with a waterproof seal to prevent inflow of any water or contaminants. Drains will be provided, when feasible, to keep water out of the well and below the well cap. The monument and cover must be designed to withstand the maximum expected load.

13.4 Abandonment.

13.4.1 Abandonment of monitor wells shall be completed in compliance with the provisions of Section R655-4-12. The provisions of Section R655-4-12 are not required for the permanent abandonment of monitor wells completed less than 30 feet below natural ground surface.

KEY: water rights, licensing, well drilling

2000

73-3

Notice of Continuation September 12, 2000



Public Safety, Driver License R708-7 Functional Ability in Driving: Guidelines for Physicians

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23145

FILED: 09/13/2000, 15:53

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement changes in a medical booklet called "Functional Ability in Driving: Guidelines for Physicians" which is used in determining restrictions on a driver license.

SUMMARY OF THE RULE OR CHANGE: As per the recommendations of the Driver License Medical Review Board, the "Functional Ability in Driving: Guidelines for Physicians" has been changed. Specifically, level 1 in category E has been changed to level 2, level 2 in categories A,B,D,F, and J have been changed to level 4, and level 3 in categories C,G,H,I,and K have been changed to level 5. These changes were made, after the Board had determined through various studies, that requirements for restrictions on driver licenses could be changed without adversely affecting highway safety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53-3-303 and 53-3-304
FEDERAL REQUIREMENT FOR THIS RULE: 49 CFR 391.43

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: "Functional Ability in Driving: Guidelines for Physicians" August 9, 2000

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Driver License Division's budget will only be affected by the cost of having to print and issue new guidelines to physicians and other health care providers. The division plans to print 10,000 guidelines for approximately \$40,000.

❖LOCAL GOVERNMENTS: There will be no cost impact because there is no associated cost with this rule to local government; local governments are not affected by the provisions of this rule.

❖OTHER PERSONS: Other persons, other than the health care providers, will be charged a \$5 fee to purchase a copy of the guidelines.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Other than the \$5 fee to purchase the guidelines, individuals will not have a financial impact because of the rule changes. Health care providers will not be charged a fee for the guidelines and also will not have a financial impact because of the rule changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes in this rule will not have any fiscal impact on businesses.

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

Public Safety
Driver License
Calvin Rampton Building
4501 South 2700 West
PO Box 30560
Salt Lake City, UT 84130-0560, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at (801) 965-4456, by FAX at (801) 965-4496, or by Internet E-mail at vroos@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: David A. Beach, Director

R708. Public Safety, Driver License.**R708-7. Functional Ability in Driving: Guidelines for Physicians.****R708-7-1. Purpose.**

The purpose of this rule is to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the driver's responsibilities regarding their health as it relates to highway safety.

R708-7-2. Authority.

This rule is authorized by Sections 53-3-224, 53-3-303, 53-3-304, and 49 CFR 391.43.

R708-7-3. Definitions.

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Division" means the Driver License Division.

(3) "Health care professional" means a physician or surgeon licensed to practice medicine in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(4) "Impaired person" means a person who has a mental, emotional, or nonstable physical disability or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highway. It does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

R708-7-[1]4. Health and Driving.

(1) Every driver operating a vehicle[~~on Utah roads~~] is individually responsible for ~~his~~their health when driving. Each applicant for a Utah driver license shall be required to answer personal health questions related to driving safety[~~—These questions have been adopted by the division~~] in accordance with recommendations made by the Driver License Medical Advisory Board pursuant to the provisions of Section 53-3-303(8). If the applicant experiences a significant health problem, the applicant is required to take a medical report form furnished by the division to a health care professional who provides all requested information, including a functional ability profile that reflects the applicant's medical condition.

(2) The health care professional will be expected to discuss the applicant's health as it may affect driving abilities and to make special recommendations in unusual circumstances. Based upon a completed functional profile, the division may deny driving privileges or issue a license with or without limitations in accordance with the standards described in this rule and lists, tables, and charts incorporated herein. Health care professionals have a responsibility to help reduce unsafe highway driving conditions by carefully applying these guidelines and standards, and by counseling with their patients about driving under medical constraints.

R708-7-[2]5. Driver's Responsibilities.

(1) The 1979 Utah State Legislature has defined driver operating responsibilities in Section 53-3-303, related to physical, mental or emotional impairments of drivers[~~:-~~]. Drivers are:

- (a) [~~Utah drivers are~~]responsible to refrain from driving if there is uncertainty caused from having a physical, mental or emotional impairment which may affect driving safety;
- (b) [~~Utah drivers are~~]expected to seek competent medical evaluation and advice about the significance of any impairment that relates to driving vehicles safely; and
- (c) [~~Utah drivers are~~]responsible for reporting a "physical, mental or emotional impairment which may affect driving safety" to the Driver License Division in a timely manner.

R708-7-[3]6. Health Care Professional's Responsibilities.

(1) Pursuant to Section 53-3-303, health care professionals shall:

- (a) make reports to the [~~state Driver License D~~]division respecting impairments which may affect driving safety when requested by their patients. Nevertheless, the final responsibility for issuing a driver license remains with the [~~D~~]director of the [~~Driver License D~~]division;
- (b) counsel their patients about how their condition affects safe driving. For example, if medication is prescribed for a patient which may cause changes in alertness or coordination, [~~his~~]the health care professional shall advise [~~him~~]the patient about how the medication can affect safe driving, and when it would be safe to operate a vehicle. Or, if a patient's visual acuity drops, [~~he~~]the patient should similarly be advised, at least until corrective action has been taken to improve vision; and
- (c) in accordance with Section 53-3-303(14)(b), be responsible for making available to their patients without reservation, their recommendations and appropriate information related to driving safety and responsibilities, whether defined by published guidelines or not.

R708-7-[4]7. Driver License Medical Advisory Board.

(1) [~~Pursuant to Section 53-3-303, t~~]The Driver License Medical Advisory Board, as per Section 53-3-303, shall advise the [~~D~~]director of the [~~Driver License D~~]division and recommend written functional ability profile guidelines and standards for determining the physical, mental and emotional capabilities of applicants for licenses, appropriate to various driving abilities.

(2) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of [~~B~~]board members.

All of the actions of the [~~D~~]director and [~~B~~]board are subject to judicial review.

(3) In accordance with Section 53-3-303(8),the [~~B~~]board shall administer the functional ability profile guidelines, which are intended to minimize such conflicts as the individual's desire to drive and the community's desire for highway safety.

R708-7-[5]8. Persons Authorized to Complete "Functional Ability Evaluation Medical Certificate Report" Forms.

(1) Physicians and surgeons licensed to practice medicine may complete the entire reporting form.

(2) In accordance with 49 CFR 391.43 physician assistants, advanced practice nurses, doctors of chiropractic and other health care professionals, may perform physical examinations and report their findings on the Functional Ability Evaluation medical Certificate Report provided that:

- (a) they are licensed by the [~~S~~]state as health care professionals[~~:-~~];
- (b) the physical examination does not require advanced or complex diagnosis or treatment[~~:-~~]; and
- (c) in the event that advanced or complex medical diagnostic analysis is required, or the patient profile level is more severe (numerically higher) than level [~~1~~]2 in category E; level [~~2~~]4 in categories A,B,[~~C~~]D,F,J,[~~or G~~]; and level [~~3~~]5 in categories [~~J or K~~], or level 4 in categories H, I, or E[~~C, G, H, I, K~~]; [~~t~~]The licensed health care professional, consistent with sound medical practices, will be expected to promptly refer the patient to the appropriate physician, surgeon or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

(3) Drivers whose profile levels do not meet the guidelines and standards listed in (2)(b) or (c) will be required to have a physician or surgeon complete the Functional Ability Evaluation Medical Certificate Report.

R708-7-[6]9. Functional Ability Profile Categories.

[~~(t)~~]Functional ability of a driver to operate a vehicle safely may be affected by a wide range of physical, mental or emotional impairments. To simplify reporting and to make possible a comparison of relative risks and limitations, the Medical Advisory Board has adopted physical, emotional and behavioral functional ability profiles as defined in 12 separate categories, with multiple levels under each category.

R708-7-[7]10. Use of the Functional Ability Profile.

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report functional ability profiles on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are adopted and incorporated within this rule by reference, and are referred to in a booklet entitled, "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", ([~~August 1, 1992 ed.~~]August 9,2000 ed.). Specific categories are:

~~(a) [Category A - Diabetes and Other Metabolic Conditions; narrative listing and table.]"Category A" - diabetes and other metabolic conditions; narrative listing and table;~~

~~(b) [Category B - Cardiovascular; narrative listing and table.]"Category B" - cardiovascular; narrative listing and table;~~

~~(c) [Category C - Pulmonary; narrative listing and table.]"Category C" - pulmonary; narrative listing and table;~~

~~(d) [Category D - Neurologic; narrative listing and table.]"Category D" - neurologic; narrative listing and table;~~

~~(e) [Category E - Epilepsy and Other Episodic Conditions; narrative listing and table.]"Category E" - epilepsy and other episodic conditions; narrative listing and table;~~

~~(f) [Category F - Learning, Memory and Communications; narrative listing and table.]"Category F" - learning, memory and communications; narrative listing and table;~~

~~(g) [Category G - Psychiatric or Emotional Conditions; narrative listing and table.]"Category G" - psychiatric or emotional conditions; narrative listing and table;~~

~~(h) [Category H - Alcohol and Other Drugs; narrative listing and table.]"Category H" - alcohol and other drugs; narrative listing and table;~~

~~(i) [Category I - Visual Acuity; narrative listing and table.]"Category I" - visual acuity; narrative listing and table;~~

~~(j) [Category J - Musculoskeletal Abnormality or Chronic Medical Debility; narrative listing and table.]"Category J" - musculoskeletal abnormality or chronic medical debility; narrative listing and table;~~

~~(k) [Category K - Functional Motor Ability; narrative listing and table.]"Category K" - alertness or sleep disorders; narrative listing and table; and~~

~~(L) [Category L - Hearing; narrative listing and table.]"Category L" - hearing and balance; narrative listing and table.~~

(3) Copies of these ~~documents~~ guidelines are printed in a booklet and distributed by the ~~Utah Driver License D~~ division. These booklets may be obtained ~~free of charge~~ at no cost for health care professionals or ~~at a cost of~~ \$5 ~~each~~ per booklet for all other[s] individuals.~~[from the division medical section.]~~ Copies may be obtained in person or by written request to the Driver License Division Medical Section at P.O. Box 30560, Salt Lake City, Utah 84130-0560.

KEY: ~~[physicians, administrative procedure]~~ administrative procedure, health care professionals, physicians
[1994]2000 [53-3-303]53-3-224
Notice of Continuation December 3, 1997 [53-3-304]53-3-303
53-3-304
49 CFR 391.43



Tax Commission, Administration
R861-1A-16
Utah State Tax Commission
Management Plan Pursuant to Utah
Code Ann. Section 59-1-207

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23154

FILED: 09/14/2000, 16:04

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-1-207 requires the Tax Commission to establish, by rule, a management plan for the agency.

SUMMARY OF THE RULE OR CHANGE: Proposed amendment updates the names of the agency's divisions and other units; makes technical changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-207

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--The amendment and underlying rule relate only to the internal management of the Tax Commission.

❖LOCAL GOVERNMENTS: None--The amendment and underlying rule relate only to the internal management of the Tax Commission.

❖OTHER PERSONS: None--The amendment and underlying rule relate only to the internal management of the Tax Commission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendment and underlying rule relate only to the internal management of the Tax Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This amendment updates Tax Commission division names and has no impact on businesses.

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

Tax Commission
Administration
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Pam Hendrickson, Commissioner

R861. Tax Commission, Administration.

R861-1A. Administrative Procedures.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

- a) Internal Audit;
- b) Administrative Secretary;
- c) Appeals;
- d) Economic and Statistical;
- e) Community Relations; and
- f) ~~Tax Policy Analyst~~ Legal Counsel.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- a) Administration;
- b) ~~Customer Service~~ Taxpayer Services;
- c) ~~Collections~~ Motor Vehicle;
- d) Auditing;
- e) Property Tax;
- f) Technology Management;
- g) ~~Tax and Motor Vehicle~~ Processing; and
- h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest ~~of~~ offers in compromise agreements in amounts under \$10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

- 1. the agency budget;
- 2. the strategic plan of the agency;
- 3. administrative rules and bulletins;
- 4. waivers of penalty and interest in amounts of \$10,000 or more as per the waiver of penalty and interest policy;
- 5. offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;
- 6. stipulated or negotiated agreements that dispose of matters on appeal; and
- 7. voluntary disclosure agreements that meet the following criteria[;]:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of \$10,000 or more.

E. The commission shall retain ~~responsibility~~ authority for the following functions:

- 1. rulemaking;
- 2. adjudicative proceedings;
- 3. advisory opinions issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
- 4. internal audit processes;
- 5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the

executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
~~June 21,~~2000 **59-1-207**
Notice of Continuation May 20, 1997



Tax Commission, Auditing
R865-19S-112
Confirmation of Purchase of Admission or User Fee Relating to the Olympic Winter Games of 2002 Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 23155
FILED: 09/14/2000, 16:04
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 as amended by 2000 S.B. 272 requires the Tax Commission to make rules defining what constitutes sending a purchaser confirmation of the purchase of an admission or user fee.

(DAR Note: S.B. 272 is found at 2000 Utah Laws 325, and was effective May 1, 2000.)

SUMMARY OF THE RULE OR CHANGE: Proposed section indicates when a purchaser has been sent confirmation of the purchase of a ticket to the Olympic Winter Games of 2002.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-103 and 59-12-104

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** None--Any fiscal impact should have been taken into account in 2000 S.B. 272.

❖**LOCAL GOVERNMENTS:** None--Any fiscal impact should have been taken into account in 2000 S.B. 272.

❖**OTHER PERSONS:** None--Any fiscal impact should have been taken into account in 2000 S.B. 272.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed rule merely defines when a purchaser has been sent confirmation to the purchases of a ticket to the Olympic Winter Games.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule clarifies S.B. 272 passed by the legislature and any fiscal impact on businesses was taken into account at that time.

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

Tax Commission
Auditing
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.

R865-19S. Sales and Use Tax.

R865-19S-112. Confirmation of Purchase of Admission or User Fee Relating to the Olympic Winter Games of 2002 Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. For purposes of the sales and use tax exemption for amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002:

1. Except as provided in 2., the Salt Lake Organizing Committee (SLOC), or a person designated by SLOC, is deemed to

have sent a purchaser confirmation of the purchase of an admission or user fee relating to the Olympic Winter Games of 2002 at the time SLOC or its designee receives a payment for the purchase.

2. In the case of a purchase of tickets designated as lottery tickets by SLOC, SLOC or its designee are deemed to have sent confirmation of the purchase at the time the purchaser accepts the tickets available to him or her through that process.

KEY: charities, tax exemptions, religious activities, sales tax
~~October 14, 1998~~ **2000** 59-12-103
 Notice of Continuation May 22, 1997 59-12-104



Tax Commission, Property Tax
R884-24P-60

Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 23156
 FILED: 09/14/2000, 16:04
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 1999 H.B. 275 amended Section 59-2-1104 to allow the veterans property tax exemption to be applied against personal property taxes as well as real property taxes. Section 59-2-405.1 imposes an age based uniform fee on certain vehicles. (DAR Note: H.B. 275 is found at 1999 Utah Laws 354, and was effective January 1, 2000.)

SUMMARY OF THE RULE OR CHANGE: Proposed amendment provides that the property tax exemption for veterans may be applied against the age-based uniform fee. This amendment is necessitated by a recent statutory change.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-405.1

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any impact should have been taken into account in the fiscal note prepared for 1999 H.B. 275.
- ❖ LOCAL GOVERNMENTS: None--Any impact should have been taken into account in the fiscal note prepared for 1999 H.B. 275.
- ❖ OTHER PERSONS: None--Any impact should have been taken into account in the fiscal note prepared for 1999 H.B. 275.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment makes it clear to affected persons that

they may apply the veterans property tax exemption against their age-based vehicle fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This section applies only to individual tax payers if they qualify for the veterans exemption.

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

Tax Commission
 Property Tax
 Tax Commission Building
 210 North 1950 West
 Salt Lake City, UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. mobile and manufactured homes;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current calendar year.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is ~~not~~ applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of

determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

KEY: taxation, personal property, property tax, appraisal
~~[June 1,]2000~~ **Art. XIII, Sec 2**
Notice of Continuation May 8, 1997 **59-2-405.1**



Tax Commission, Property Tax
R884-24P-61
1.5 Percent Uniform Fee on Tangible
Personal Property Required to be
Registered with the State Pursuant to
Utah Code Ann. Sections 41-1a-202,
59-2-104, 59-2-401, 59-2-402, and 59-
2-405

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 23157
 FILED: 09/14/2000, 16:04
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 1999 H.B. 275 amended Section 59-2-1104 to allow the veterans property tax exemption to be applied against personal property taxes as well as real property taxes. Section 59-2-405 imposes a 1.5 percent uniform fee on certain vehicles. **(DAR Note:** H.B. 275 is found at 1999 Utah Laws 354, and was effective January 1, 2000.)

SUMMARY OF THE RULE OR CHANGE: Proposed amendment provides that the property tax exemption for veterans may be applied against the 1.5 percent uniform fee. This amendment is necessitated by a recent statutory change.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-405

ANTICIPATED COST OR SAVINGS TO:
 ❖THE STATE BUDGET: None--Any impact should have been taken into account in the fiscal note prepared for 1999 H.B. 275.
 ❖LOCAL GOVERNMENTS: None--Any impact should have been taken into account in the fiscal note prepared for 1999 H.B. 275.
 ❖OTHER PERSONS: None--Any impact should have been taken into account in the fiscal note prepared for 1999 H.B. 275.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any impact should have been taken into account in the fiscal note prepared for 1999 H.B. 275.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule applies only to individual tax payers if they qualify for the veterans exemption.

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

Tax Commission
Property Tax
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. [Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and]Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state;

and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends October 31, 2000. At its option, the agency may hold public hearings.

From the end of the waiting period through January 29, 2001, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Insurance, Administration
R590-200
Diabetes Treatment and Management

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 22923
FILED: 09/14/2000, 16:36
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to assimilate input received during the comment period and hearing.

SUMMARY OF THE RULE OR CHANGE: In Section R590-200-3 we gave the insurers the ability to preauthorize comprehensive education and a formulary list.

In Section R590-200-4 we exempted medigap policies. Removed the insulin pump requirement in Subsection R590-200-4(4). In Subsection R590-200-4(6) a better definition of "medical supplies" was inserted.

In Subsection R590-200-5(1) a clarification on education training was provided. In Subsection R590-200-5(1)(a) "Agency" was changed to "Administration" to follow appropriate title. In Subsection R590-200-5(2) the requirements from Section R590-200-3 were added. In Subsection R590-200-5(2)(i) insulin pump requirements were added.

Other technical changes were made that did not change the intent or meaning of the rule.

(DAR Note: The original proposed new rule upon which this change in proposed rule is based was published in the July 1, 2000, issue of the Utah State Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-626

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: The changes in this rule will not require insurers to change their policy rates or forms which would have increased the amount of fees coming into the department, nor will the changes require additional or reduced work on the part of the Department.

LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency to which all fees are paid by its licensees.

OTHER PERSONS: The above changes will not require insurers to change policy forms or increase or decrease policy premiums.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The above changes will not require insurers to change policy forms or increase or decrease policy premiums.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The above changes will not require insurers to change policy forms or increase or decrease policy premiums. As a result consumers will not be affected by these changes.

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

Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 10/31/2000; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 10/18/2000, 9:00 a.m., State Office Building (behind the Capitol), Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2000

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-200. Diabetes Treatment and Management.

.....

R590-200-3. Applicability and Scope.

(1) This rule applies to all Health care insurance policies sold in Utah.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of a claim under the terms of the policy, certificate or both, as issued to the claimant.

(3) This rule does not prohibit an insurer from requesting a pre-authorization for comprehensive education benefits if the requirement is stated in the policy.

(4) This rule does not prohibit use of formularies and the use of a tiered approach to formularies if the requirement is stated in the policy.

R590-200-4. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition, the following:

(1) "Health care insurance" means insurance providing health care benefits or payment of health care expenses incurred, including prescription insurance. ["]Health care insurance["] does not include accident and health insurance providing benefits for:

- (a) dental and vision;
(b) income replacement;
(c) short term accident;
(d) fixed indemnity;
(e) credit accident and health;
(f) supplements to liability;
(g) workers compensation;
(h) automobile medical payments;
(i) no fault automobile;

- (j) medigap insurance plans;
- (k) equivalent self-insurance; and
- ~~(l)~~(l) any type of accident and health insurance that is a part of or attached to another type of policy.

(2) "Diabetes" means diabetes mellitus a common chronic, serious systemic disorder of energy metabolism that includes a heterogenous group of metabolic disorders that can be characterized by an elevated blood glucose level. The terms diabetes and diabetes mellitus are considered synonymous and defined to include persons using insulin, persons not using insulin, individuals with elevated blood glucose levels induced by pregnancy, or persons with other medical conditions or medical therapies which wholly or partially consist of elevated blood glucose levels.

(3) "Diabetes self-management training" means a program designed to help individuals to learn to manage their diabetes in an outpatient setting. They learn self-management skills that include making lifestyle changes to effectively manage their diabetes and to avoid or delay the complication, hospitalizations and emergency room visits associated with this illness. This training includes medical nutrition therapy.

(4) "Medical equipment" means non-disposable/durable equipment used to treat diabetes~~[- For purposes of this section, insulin pumps and related supplies will not be defined as "durable medical equipment"],~~ and will be treated per the standard deductibles, copayments and coinsurance of the policy.

(5) "Medical nutrition therapy" means the assessment of patient nutritional status followed by therapy including diet modification, planning and counseling services which are furnished by a registered licensed dietitian.

(6) "Medical supplies" means ~~disposable supplies used to treat diabetes;~~ means the generally accepted single-use items used to manage, monitor, and treat diabetes, and to administer diabetes specific medications.

R590-200-5. Minimum Standards and General Provisions.

The commissioner will require that deductibles, copayments and coinsurance of coverage for the treatment of diabetes are equitable or identical to those deductibles, copayments and coinsurance of coverage required for the treatment of other illnesses or diseases.

(1) All health care insurance policies will cover diabetes self-management training and patient management, including medical nutrition therapy, when deemed medically necessary by and prescribed by an attending physician covered by the plan. Training will be provided by an accredited or certified diabetes self-management education program ~~[upon diagnosis;]~~ accepted by the plan upon diagnosis. The program must provide up to 14-hours of initial training, this includes: an individualized assessment for a minimum of one-hour; training up to ten topics and follow-up to assess progress for a minimum of one-hour; and comprehensive education upon a significant change in condition, diagnostic levels or treatment. These services must be provided by an accredited or certified program:

- (a) recognized by the federal Health Care Financing ~~Agency]~~ Administration; or
- (b) certified by the Department of Health; or
- (c) approved or accredited by a national organization certifying standards of quality in the provision of diabetes self-management education.

(2) All health care policies will cover the following medical equipment and medical supplies while treating diabetes when deemed medically necessary by a physician covered by the plan:

(a) blood glucose monitors, including commercially available blood glucose monitors designed for patients use and for persons who have been diagnosed with diabetes;

(b) blood glucose monitors to the legally blind which includes commercially available blood glucose monitors designed for patient use with adaptive devices and for persons who are legally blind and have been diagnosed with diabetes;

(c) test strips for glucose monitors, which includes test strips whose performance ~~[shall achieve]~~ achieved clearance by the FDA for marketing;

(d) visual reading and urine testing strips, which includes visual reading strips for glucose, urine testing strips for ketones, or urine test strips for both glucose and ketones. Using urine test strips for glucose only is not acceptable as the sole method of monitoring blood sugar levels;

(e) lancet devices and lancets for monitoring glycemic control;

(f) insulin, which includes commercially available insulin preparations including insulin analog preparations available in either vial or cartridge;

(g) injection aides, including those adaptable to meet the needs of the legally blind, to assist with insulin injection;

(h) syringes, which includes insulin syringes, pen-like insulin injection devices, pen needles for pen-like insulin injection devices and other disposable parts required for insulin injection aids;

(i) insulin pumps, which includes insulin infusion pumps and supplies such as skin preparations, adhesive supplies, infusion sets, cartridges, batteries and other disposable supplies needed to maintain insulin pump therapy. Includes durable and disposable devices used to assist in the injection of insulin~~[-]~~. Insulin pumps will be covered under the plan, and the plan must have a minimum of \$5000 coverage for these devices;

(j) prescription~~[prescriptive]~~ oral agents of each class approved by the FDA for treatment of diabetes, and a variety of drugs, when available, within each class; and

(k) glucagon kits.

.....

**KEY: insurance law
2000**

**31A-2-201
31A-22-626**



**End of the Notices of Changes
in Proposed Rules Section**

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

Environmental Quality, Air Quality **R307-115** General Conformity

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 23133
FILED: 09/06/2000, 12:10
RECEIVED BY: NL

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: 40 CFR Part 93, Subpart B requires that states prepare state implementation plans and rules necessary to implement general conformity. The state implementation plan is incorporated by reference under Section R307-110-30. The Environmental Protection Agency (EPA) published approval of the state implementation plan and Rule R307-115 on November 19, 1999.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule was adopted by the Air Quality Board on October 4, 1995, and became effective on October 12, 1995. A public hearing was held on August 23, 1995. No oral or written comments were received, and none have been received since then.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required by 40 CFR Part 93.

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

Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820

Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042,
by FAX at (801) 536-0099, or Internet E-mail at
jmiller@deq.state.ut.us.

AUTHORIZED BY: Rick Sprott, Planning Branch Manager

EFFECTIVE: 09/06/2000

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Environmental Quality, Solid and Hazardous Waste **R315-16** Standards for Universal Waste Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 23165
FILED: 09/15/2000, 14:57
RECEIVED BY: NL

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 19-6-105 requires that minimum standards be established for protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of solid waste. The Resource Conservation and Recovery Act (RCRA) Section 3006 requires that authorized State programs be "equivalent" to the Federal 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: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for Utah to maintain its equivalency with the Environmental Protection Agency regulations for program authorization and to provide standards for the handling of universal wastes (waste batteries, mercury-containing thermostats and lamps, and certain recalled, obsolete, or unused pesticides).

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

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at storonto@deq.state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Director

EFFECTIVE: 09/15/2000

action initiated to compel compliance with the Act or rules adopted under the Act. This rule provides criteria to be used by the Executive Secretary of the Board for determining penalty amounts in settlement of enforcement action.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for providing criteria for the settlement of enforcement actions.

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

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or Internet E-mail at storonto@deq.state.ut.us.

AUTHORIZED BY: Dennis R. Downs, Director

EFFECTIVE: 09/15/2000

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**Environmental Quality, Solid and
Hazardous Waste
R315-102
Penalty Policy**

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 23166
FILED: 09/15/2000, 14:57
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-6-113(2) of the Utah Solid and Hazardous Waste Act provides that any person who violates any order, plan, rule, or other requirement issued or adopted under the Act is subject in a civil proceeding to a penalty. Subsection 19-6-104(1)(e) allows the Utah Solid and Hazardous Waste Control Board to settle or compromise administrative or civil

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**Natural Resources, Water Rights
R655-4
Water Well Drillers**

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 23142
FILED: 09/12/2000, 11:17
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 73-3-25 stipulates that every person that constructs a well in the state of Utah shall obtain a license from the state engineer. The state engineer shall enact rules for well construction according to the procedures and requirements of Title 63, Chapter 46a. Section 73-3-22 stipulates that any person constructing a well for the purpose of utilizing or monitoring underground waters shall report to the state engineer within

30 days of the completion or abandonment of the structure. The report shall be made on forms furnished by the state engineer.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary for the state engineer to regulate the water well industry in the state of Utah by assisting in the orderly development of underground water; insuring that minimum construction standards are followed; preventing pollution of aquifers within the state; preventing the waste of water from flowing wells; obtaining accurate records of well construction operations; and insuring compliance with the state engineer's authority for appropriating water.

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

Natural Resources
Water Rights
Suite 210
1594 West North Temple
PO Box 146300
Salt Lake City, UT 84114-6300, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mary Beth Gray at the above address, by phone at (801) 538-7370, by FAX at (801) 538-7467, or Internet E-mail at nrwrt.bgray@state.ut.us.

AUTHORIZED BY: Robert L. Morgan, State Engineer

EFFECTIVE: 09/12/2000



**Workforce Services, Workforce
Information and Payment Services
R994-207
Unemployment**

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 23149
FILED: 09/14/2000, 12:37
RECEIVED BY: NL

**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 enacted under Section 35A-4-207. This section defines "unemployed" within the meaning of the Act and directs the Department to prescribe rules that address the procedure that shall apply to total unemployment, part - total unemployment, partial unemployment of job attached individual, and other forms of short-time work.

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 since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines the terms and conditions under which an individual who is not totally unemployed, may qualify for unemployment insurance benefits. For the orderly administration of the Act it is necessary to have rules that explain how self-employment, commission sales, responsibilities as a corporate officer, and volunteer work impact an individual's entitlement to unemployment insurance (UI) benefits.

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

Workforce Services
Workforce Information and Payment Services
Fourth Floor
140 East 300 South
PO Box 45277
Salt Lake City, UT 84145-0277, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Christopher W. Love at the above address, by phone at (801) 526-9291, by FAX at (801) 526-9800, or Internet E-mail at wsdmppo.clove@email.state.ut.us.

AUTHORIZED BY: Robert C. Gross, Executive Director

EFFECTIVE: 09/14/2000



**End of the Five-Year Notices of Review
and Statements of Continuation Section**

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal and Reenact

REP = Repeal

Crime Victim Reparations

Administration

No. 23041 (AMD): R270-1. Award and Reparation Standards.

Published: August 15, 2000

Effective: September 15, 2000

No. 23042 (AMD): R270-2. Crime Victim Reparations Adjudicative Proceedings.

Published: August 15, 2000

Effective: September 15, 2000

Regents (Board of)

Administration

No. 23025 (AMD): R765-610. Utah Higher Education Assistance Authority Federal Family Education Loan Programs, PLUS, SLS and Loan Consolidation Programs.

Published: August 15, 2000

Effective: September 15, 2000

End of the Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2000, including notices of effective date received through September 15, 2000, the effective dates of which are no later than October 1, 2000. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR Note: Because of space constraints, neither index is included in this *Bulletin*.

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.state.ut.us/>).
